PALMDALE

a place to call home

CITY COUNCIL MEETING
HOUSING AUTHORITY
CITY COUNCIL CHAMBERS
38300 SIERRA HIGHWAY
SUITE B
PALMDALE, CA 93550
WEDNESDAY, NOVEMBER 15, 2023
5:00 PM
www.cityofpalmdale.org

WELCOME

1. **CALL MEETING TO ORDER**

***Note: All City Council memberships are reflected in their City Council titles.**

2. **ROLL CALL**
   MAYOR BETTENCOURT, MAYOR PRO TEM ALARCÓN, COUNCILMEMBERS BISHOP, LOA, OHLSEN
   COMMISSIONERS FRAGA-SAENZ, BETTS

3. **PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE**

4. **PRESENTATION**

   4.1 Declaring Saturday, November 25th, 2023 as Small Business Saturday.

<u>PUBLIC COMMENT RULES:</u>

"(California Government Code Section 54954.3).
(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2 [section omitted].

(b) (1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of the subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency."

In furtherance of Section 54954.3 of the Brown Act, the public is allotted to speak a total of three (3) minutes on the entirety of the CC/HA Consent Calendar(s), Appointment, New Business and Closed Session, with two (2) minutes on each Public Hearing, and, if desired, an additional two (2) minutes on items not on the agenda that are within the subject matter jurisdiction of the City Council. As specified in the Brown Act, a speaker utilizing a translator will receive twice the amount of time specified.

5. **PUBLIC COMMENTS:**
CC/HA CONSENT CALENDAR(S), APPOINTMENT, NEW BUSINESS, AND CLOSED SESSION: Now is the time for public participation on items listed on the CC/HA Consent Calendar(s), Appointment, New Business, and Closed Session. Each speaker is allotted three (3) minutes total on the entirety of the above sections.

6. **HOUSING AUTHORITY CONSENT CALENDAR**
All matters listed under the Housing Authority Consent Calendar will be enacted by one motion unless an item(s) is pulled by the Authority, in which case the item(s) will be removed from the Calendar and will be considered separately following this portion of the Agenda**.**

6.1 Waive full reading of the Resolution(s) and/or Ordinance(s) to be considered and voted on at this meeting. (This permits reading the title only in lieu of reciting the entire text.)

6.2 Approve ongoing contractor service agreements with M. Brey Electric, Inc. dba MBE Construction (A-8566), Houalla Enterprises Ltd. dba Metro Builders & Engineers Group, Ltd. (A-8558), and Nash Construction Services, Inc. (A-8565) for $200,000 each for two years with option for one additional year.
SR_-_HA_-_Ongoing_Contractor_Agreements.docx
Brey Electric, Inc. dba MBE Construction(A-8566).pdf
Metro Builders & Engineers Group (A-8558).pdf
Nash Construction Services Inc. (A-8565).pdf

6.3 Adopt Resolution No. HA 2023-004, a Resolution of the Housing Authority of the City of Palmdale approving the sale of 38553 4th Street East, APN 3008-016-902 at the appraised value to an eligible household, and to provide a loan from proceeds or Permanent Local Housing Allocation funds (PLHA) to meet affordability requirements.

03_Staff_Report_HA_4th_Street_v2.docx
Resolution 2023 004 4th Street.docx

7. **CONSENT CALENDAR**

All matters listed under the Consent Calendar will be enacted by one motion unless an item(s) is pulled by Council, in which case the item(s) will be removed from the Calendar and will be considered separately following this portion of the Agenda.

7.1 Adopt Resolution No. CC 2023-075, a Resolution of the City Council of the City of Palmdale amending the City's Classification and Pay Plan for General Positions; Adopt Resolution No. CC 2023-076, a Resolution of the City Council of the City of Palmdale amending the City's Classification and Pay Plan for Bargaining Unit Positions; and Adopt Resolution No. CC 2023-037, a Resolution of the City Council of the City of Palmdale Establishing Director/Executive Employees' Compensation, Benefits, and Other Terms and Conditions of Employment.

1._Staff_Report_-_Classification_And_Pay_Plan.docx
2. Resolution CC 2023-075 General Positions 11.15.23.doc
3. Exhibit #1 2023-075 CLASSIFICATION AND PAY PLAN General Positions 11.15.2023.doc
3. Exhibit #2 Salary Schedule General Positions 11.15.23.pdf
4. Resolution CC 2023-076 Bargaining Unit 11.15.23.doc
5. Exhibit #1 2023-076 CLASSIFICATION AND PAY PLAN Bargaining Unit 11.15.23.doc
5. Exhibit #2 Salary Schedule Baragining Unit Positions 11.15.23.pdf
6. Resolution CC 2023-037 Executive Employment Resolution.doc

7.2 Adopt Resolution No. CC 2023-067, a Resolution of the City Council of the City of Palmdale approving the Palmdale Aerospace Incentive Program.

SR-_Aerospace_Incentive_Program.docx
RESO- CC 2023-067 Aerospace Incentive Program.doc
Aerospace Incentive Program Application_.docx

7.3 Notice of Completion - Accept Public Improvements for Circle K at 3851 East Palmdale Blvd.

SR-11152023__17-02_.docx
EXHIBIT A 17-02.docx
EXHIBIT B.docx
NOC_17-02 ST IMPROVEMENTS.doc

7.4 Approve ongoing contractor service agreements with M. Brey Electric, Inc. dba MBE Construction, Houalla Enterprises Ltd. dba Metro Builders & Engineers Group, Ltd., and Nash Construction Services, Inc. for $200,000 each for two years.

Ongoing_contractor_agreements_Nash_Mbrey_and_Metro.docx
City of Palmdale - AGENDA ITEM - M. Brey Electric, Inc. dba MBE Construction (MBE) (A-8559) - 09-28-2023 - Preview (2).pdf
City of Palmdale - AGENDA ITEM - Houalla Enterprises LTD. dba. Metro Builders & Engineers Group, LTD (A-8560) - 10-03-20.pdf
City of Palmdale - AGENDA ITEM - Nash Construction Services Inc. (A-8561) - 10-02-2023 - Preview (2).pdf

7.5 Approve agreement with Southern California Edison (SCE) for participation in the Small Site Rebate Program for the purchase and installation of three Electrical Vehicle (EV) Charging Stations at the Palmdale City Library.

SR_-_Acceptance_of_SCE_Small_Site_Rebate_Program.docx
SCE DRAFT Agreement No. A-8595.pdf
SCE Small Site Rebate Program Process .pdf

7.6 Consideration and adoption of Resolution No. CC 2023-059, a Resolution of the City Council of the City of Palmdale approving the renaming of Avenue Q-6 to Hammack Avenue (Avenue Q-6) between Sierra Highway to 10th Street East.

SR_Hammack_Avenue__Avenue_Q-6_.docx
Resolution CC 2023-059 Hammack Avenue.doc
Map_Hammack Ave (Avenue Q-6).pdf

7.7 Approve the minutes from the previous meetings.

CC - November 1, 2023
11 01 2023 Minutes CC_SA_PFA.pdf

8. APPOINTMENT

8.1 City Council Nomination and Appointment of one (1) Member to the Palmdale Tourism Improvement District Board.

SR PTID Appointment_2023.docx
master_tid_application_Fillable - Stapleton - 18 Oct 23.pdf
Beaumont, Lura.pdf

9. PUBLIC HEARING

9.1 Introduction and Adoption of Ordinance No. 1612, an Ordinance of the City Council of the City of Palmdale approving various amendments to the Palmdale Municipal Code.

PUBLIC COMMENTS: Now is the time for public participation on this item. Each speaker is allotted two (2) minutes.

Staff_Report_Ordinance_No._1612__v1.docx
Ordinance No. 1612 v2.docx
Ordinance No. 1612 Exhibit I - Redlines v2.docx

9.2 Introduction and adoption of Ordinance No. 1615, an Ordinance of the City Council of the City of Palmdale approving amendments to Title 12 of the Palmdale Municipal Code (PMC); and Adopt Resolution No. CC 2023-078, a Resolution of the City Council of the City of Palmdale approving adoption of updated administrative fine amounts for building and safety violations and adoption of fines and plan processing and redemption fees associated with shopping cart enforcement and elimination of certain business permit fees.

PUBLIC COMMENTS: Now is the time for public participation on this item. Each speaker is allotted two (2) minutes.

Staff_Report_Ordinance_No._1615.docx
Ordinance No. 1615.docx
Ordinance No. 1615 Exhibit I - Redlines.docx
Resolution No. CC 2023-078.docx

9.3 Introduction and adoption of Ordinance No. 1617, an Ordinance of the City Council of the City of Palmdale approving Planned Development 23-001; a request to modify the development standards specified within the Palmdale Municipal Code for a proposed project within the Mixed Use 1 (MU 1) zone.

PUBLIC COMMENTS: Now is the time for public participation on this item. Each speaker is allotted two (2) minutes.

CC_Staff_Report_PD_23-001.docx
CC_Ordinance_No._1617.docx
EXHIBIT II - PD 23-003.pdf

9.4 Adopt Resolution No. CC 2023-068, a Resolution of the City Council of the City of Palmdale calling special election regarding alteration of Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch); Adopt Resolution No. CC 2023-069, a Resolution of the City Council of the City of Palmdale declaring results of special alteration election in the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), determining that alteration of the Rate and Method of Apportionment of Special Taxes for the District is lawfully authorized, and directing recording of an amendment to the Amended and Restated Notice of Special Tax Lien for the District.

PUBLIC COMMENTS: Now is the time for public participation on this item.

Each speaker is allotted two (2) minutes.

1. Staff Report Amendment to CFD 93-1 RMA.docx
1.1 Reso 2023-068 CallSpElecAlterFacRM J19237.docx
1.2 Reso 2023-069 DeclarResultAltFacRM J19239.docx

9.5 Adopt Resolution No. CC 2023-070, a Resolution of the City Council of the City of Palmdale of Annexation of territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), authorizing the levy of a special tax therein and submitting the levy of special tax to the qualified elector of the District; Adopt Resolution No. CC 2023-071, a Resolution of the City Council of the City of Palmdale declaring results of special annexation election, determining the validity of prior proceedings, and directing recording of amendment to Notice of Special Tax Lien - City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch).

PUBLIC COMMENTS: Now is the time for public participation on this item. Each speaker is allotted two (2) minutes.

2. Staff Report Annexation to CFD 93-1.docx
2.1 Reso 2023-070 AnnexTerr J19241.docx
2.2 Reso 2023-071 DeclarResultAnnex J19242.docx

10. **NEW BUSINESS**

10.1 Approve Purchase and Sale Agreement with RDR Development Holdings LLC to acquire 652 acres of land for $10,800,000. (APNs: 3206-007-001; 3206-007-002; 3205-002-051; 3205-002-053; 3205-002-028; 3206-025-001 (portion); 3206-006-008 (portion); and 3206-006-028 (portion) located in vicinity of Vineyard Lane and Elizabeth Lake Road.

Staff_Report_RdR.docx
Attachment 1 Aerial Map.pdf
Attachment 2 Agreement A-8533.pdf
Attachment 3 Appraisal.pdf

10.2 Approve execution of agreements related to Palmdale Solar and Battery Residential Program.

20231004_Palmdale_Staff_Report_EPIC_CCA_Power_Choice_Program-FINAL.docx
1. Framework Agreement A-8536.docx
2. Master Power Purchase Agreement A-8537.docx
3. Program Management Agreement A-8538.docx
4. Program Support Services Fee Agreement A-8539.docx
5. Multiparty Non-Disclosure Agreement A-8216.docx

11. **NON-AGENDA PUBLIC COMMENTS*: Now is the time for public participation on items not listed on the agenda. Each speaker is allotted two (2) minutes total on items not listed on the agenda.***

12. **CITY COUNCIL ANNOUNCEMENTS AND REQUESTS**

13. **CITY MANAGER'S REPORT**

14. **PRESENTATION BY CITY ATTORNEY**

    14.1 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
    Land Developers & Associates Corporation v. Successor Agency to the Community Redevelopment Agency of the City of Palmdale, et al.
    Los Angeles County Superior Court
    Case No. 22AVCV01093
    The closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).

    14.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
    Shanae Smith, Patricia Nevarez and Michael "Mike" Behen vs. City of Palmdale, et al.
    Los Angeles County Superior Court
    Case No. 22STCV18219
    This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).

    14.3 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
    William Robert Herrera, et al vs. City of Palmdale, et al.
    Central District of California Federal District Court
    Case No. 2:16-cv-09453-MWF-MAR
    This closed session is being held pursuant to the authority of California Government Code Section 54956.9.

    14.4 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
    Priscilla Huerta, et al vs. City of Palmdale, et al.
    Central District of California Federal District Court
    Case No. 2:18-10354-MWF-FFM
    This closed session is being held pursuant to the authority of California Government Code Section 54956.9.

15. **ANNOUNCEMENT BY CITY ATTORNEY**

16. **ADJOURN** meeting to December 6, 2023 at 5:00 p.m. in the City Hall Council Chamber located at 38300 Sierra Highway, Suite B, Palmdale, California.

Americans with Disabilities Act (ADA) Accommodations
In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (661) 267-5151 at least 72 hours prior to the meeting.

If you require oral Spanish translation, please contact the City Clerk's Office at (661) 267-5151 at least 72 hours prior to the meeting.

Housing Authority
Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE CHAIR AND COMMISSIONERS**

FROM: **NEIGHBORHOOD SERVICES**

DISTRICT: **ALL**

SUBJECT: **APPROVE ONGOING CONTRACTOR SERVICE AGREEMENTS WITH M. BREY ELECTRIC, INC. DBA MBE CONSTRUCTION (A-8566), HOUALLA ENTERPRISES LTD. DBA METRO BUILDERS & ENGINEERS GROUP, LTD. (A-8558), AND NASH CONSTRUCTION SERVICES INC. (A-8565) FOR $200,000 EACH FOR TWO YEARS WITH OPTION FOR ONE ADDITIONAL YEAR**

ISSUE

Approve ongoing contractor service agreements with M. Brey Electric, Inc. dba MBE Construction (A-8566), Houalla Enterprises Ltd. dba Metro Builders & Engineers Group, Ltd. (A-8558), and Nash Construction Services, Inc. (A-8565) for $200,000 each for two years with option for one additional year.

RECOMMENDATION

Staff recommends that the Housing Authority:

1. Approve ongoing contractor service agreements with M. Brey Electric Inc. dba MBE Construction (A-8566), Houalla Enterprises Ltd., dba Metro Builders & Engineers Group, Ltd. (A-8558), and Nash Construction Services, Inc.(A-8565), for $200,000 each for two years with option for one additional year; and

2. Authorize the Executive Director or their designee to execute with M. Brey Electric, Inc. dba MBE Construction (A-8566), Houalla Enterprises Ltd. dba Metro Builders & Engineers Group, Ltd. (A-8558), and Nash Construction Services, Inc. (A-8565), including non-substantive changes.

Due to the increased number of maintenance projects required at the Housing Authority properties, it was determined that the Housing Authority of the City of Palmdale (Housing Authority) should contract with general contractors to assist with small maintenance projects, including but not limited to maintenance of Neighborhood Houses and other Housing Authority properties, and the maintenance at turnover of Housing Authority apartment units. The City and Housing Authority solicited Requests for Qualifications

(RFQs) for construction-related services through an open and competitive selection process. The RFQs were publicized on the City's online bid system, Planet Bids, for 30 calendar days.

DISCUSSION

The City and Housing Authority released Request for Qualifications No. 23-001-3900 for ongoing general contractor and minor construction services in June 2023. Interested firms were required to submit a statement of qualifications that emphasizes their experience in providing general contractor-related services, including but not limited to framing and rough/finish carpentry, drywall, millwork, glazing, plumbing, electrical, HVAC, painting, etc. The selected firms were to provide all necessary personnel, material, transportation, instrumentation, and equipment necessary to satisfy all appropriate agencies and required to ensure compliance with all applicable federal, state, and local statutes, laws, codes, regulations, policies, procedures, ordinances, standards, specifications, performance standards, and guidelines, applicable to the firm's services and work product.

The contractors were given points in different categories:

- Contractor must have a full-time service office in Southern California for the duration of the contract, including a physical address and applicable business license(s), where key staff are located to ensure availability for meetings at City facilities as requested within a reasonable timeframe during normal business hours.
- Contractor has five or more years of experience performing similar work.
- Contractor must self-perform most of the primary work outlined in the scope of work section included herein with its workforce (versus using subcontractors).
- Contractor has three excellent references for similar work performed in the past five years.
- Contractor shall possess, at a minimum, a valid Class "B" contractor license when the Contractor submits its package.
- Following Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)].
- Following Labor Code Section 1770 et seq., the Project is a "public work." The selected Bidder (Contractor) and any Subcontractors shall pay wages per the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages.

Twenty (20) construction firms were notified, and the City received three qualification packages. All three contractors are qualified firms to work for the Housing Authority. MBE Construction and Metro Builders are from Beaumont and Newport Beach, respectively, and Nash Construction Services, Inc. is a local contractor.

As with other ongoing service agreements, MBE Construction, Metro Builders, and Nash Construction will be paid only for work on a specific scope authorized for projects. These agreements will set a not-to-exceed amount of $200,000 per company. The term of this agreement is two years with an option for a one-year extension.

FISCAL IMPACT

Funds for projects will be determined on an as-needed basis and are available in 29264004 and 29364005 Contract Service accounts.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

A. Seek innovative, cost-effective, customer-focused methods of service delivery.
C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

Prepared by:	Sophia Reyes, Director of Neighborhood Services
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Executive Director
Approved as to form:	William P. Curley, III, Interim Authority Attorney

ATTACHMENTS

Agreement No. A-8558 Metro Builders & Engineers Group
Agreement No. A-8565 Nash Construction Services, Inc.
Agreement No. A-8566 MBE Construction

AGREEMENT NO. A-8566
CONTRACT FOR SERVICES
BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PALMDALE AND M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION

This CONTRACT for services ("Contract" herein) is made and entered into by and between the Housing Authority of the City of Palmdale, a public body corporate and politic, (hereinafter called "HOUSING AUTHORITY"), and M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION, a California Corporation, (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, HOUSING AUTHORITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 HOUSING AUTHORITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of Sophia Reyes Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the Housing Authority project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to HOUSING AUTHORITY:

On-Going General Contractor and Minor Construction Services.

The scope of services assigned to the CONTRACTOR shall include a range of projects from minor requests to significant construction projects, such as remodeling or repair work, at HOUSING AUTHORITY-owned facilities and that will typically be time sensitive in nature on an as-needed basis.

CONTRACTOR shall provide a full range of construction maintenance, and repair services, including but not limited to:

- Framing and Rough Carpentry
- Finish Carpentry
- Drywall

• Millwork
• Glazing
• Ceramic and Mosaic Tile
• Plumbing
• Electrical
• Painting
• Roofing
• Sheet Metal
• HVAC
• Flooring
• Welding
• Asbestos Abatement
• Lead Abatement
• Masonry

CONTRACTORS regular business hours are Monday through Friday 8:00 a.m. to 5:00 p.m.

All service shall be completed in a workmanlike manner in compliance with all local, state, and federal rules, laws, and regulations, as applicable. CONTRACTOR agrees to remove all debris, trash, and unused materials when leaving the jobsite, leaving it in a broom-clean condition.

Licenses

At all times during the term of this Contract, CONTRACTOR shall possess a Class B General Building Contractors License with the Contractor's State License Board (CSLB) to perform required work. CONTRACTOR'S CSLB license number is 581224. CONTRACTOR'S DIR registration number is 1000005926. CONTRACTOR'S City of Palmdale license number is 11611788. CONTRACTOR hereby certifies that it holds the required license(s).

Prevailing Wage

This Contract calls for work to be performed constituting public works. All labor is to be paid at prevailing wage rates. CONTRACTOR to determine proper wage classification. CONTRACTOR and all subcontractors must be registered with the State of California Department of Industrial Relations (DIR) as a public works contractor for the duration of the agreement and is responsible for any and all registration and/or renewal fees. The HOUSING AUTHORITY will require certified payroll to be submitted and that it may be verified by a 3rd party labor compliance company.
CONTRACTOR acknowledges and understands it must comply with the prevailing wage requirements as per Exhibit A definition for prevailing wage requirements.

Payment and Performance Bonds

Unless otherwise expressly provided in the bid documents, if any individual project performed under the Contract exceeds $25,000,Contractor shall provide a performance and payment bonds, each in amount equal to 100% of the project. Such bonds is requested by the CITY before work is to be performed on the specified project.

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by HOUSING AUTHORITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by HOUSING AUTHORITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 365 days from the date of acceptance by HOUSING AUTHORITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to HOUSING AUTHORITY. The written warranty shall be included with the delivered products to the using Department.

HOUSING AUTHORITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in HOUSING AUTHORITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** HOUSING AUTHORITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by HOUSING AUTHORITY.

CONTRACTOR's Team and Key Personnel are as follows:

Not Applicable

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by HOUSING AUTHORITY.

3.2 **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of HOUSING AUTHORITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 **Direct Responsibility.** All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by HOUSING AUTHORITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless HOUSING AUTHORITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 CONTRACT TERM

The term of this Contract is TWO (2) YEARS/TWENTY-FOUR MONTHS, commencing on the effective date, with HOUSING AUTHORITY reserving the option to extend the agreement for 1 additional term of one year.

5 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

5.1 **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

5.2 **Property of HOUSING AUTHORI**TY**.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of HOUSING AUTHORITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of HOUSING AUTHORITY.

5.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

6 PRICE

HOUSING AUTHORITY shall pay to CONTRACTOR an amount not to exceed TWO HUNDRED THOUSAND dollars ($200,000.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

Hourly Labor / Equipment Rates for City of Palmdale					
Classification	***Regular Time***	***Overtime***	***Double Time***	***Holiday***	***Emergency Fee***
Labor					
Forman	$ 140.00	$ 190.00	$ 240.00	$ 240.00	$ 500.00
Journeyman Electrician	$ 130.00	$ 170.00	$ 217.00	$ 217.00	$ 400.00
Laborer	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Carpenter	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Plumber	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Welder	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Project Manager	$ 130.00	$ 130.00	$ 130.00	$ 130.00	
Accounting Manager	$ 130.00	$ 130.00	$ 130.00	$ 130.00	
Designer/Drafter	$ 150.00	$ 150.00	$ 150.00	$ 150.00	
Equipment					
Service Truck	$ 16.00				
Bucket Truck	$ 45.00				
Scissor Lift	$ 25.00				
Traffic Control Truck	$ 45.00				
Dump Truck	$ 65.00				
Back Hoe	$ 65.00				
Skid Steer	$ 55.00				
Excavator	$ 55.00				
Welding Truck	$ 65.00				
Attenuator Truck	$ 75.00				
Crane	$ 75.00				

6.1 An application for payment form must be submitted to HOUSING AUTHORITY which shall include the following: a clear, detailed invoice reflecting work being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included with the payment requests.

6.2 CONTRACTOR shall maintain adequate records and shall permit inspection and audit by HOUSING AUTHORITY of CONTRACTOR's charges under this Contract. CONTRACTOR shall make such records available to HOUSING

AUTHORITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to HOUSING AUTHORITY and any specified public agencies. Such records shall be maintained by CONTRACTOR for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONTRACTOR shall retain its records for the time required by such laws.

6.3 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of HOUSING AUTHORITY. No person employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of HOUSING AUTHORITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the HOUSING AUTHORITY in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the HOUSING AUTHORITY.

8 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of HOUSING AUTHORITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by HOUSING AUTHORITY in the contract documents. CONTRACTOR shall indemnify and hold harmless HOUSING AUTHORITY and anyone directly or indirectly employed by HOUSING AUTHORITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in

the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

9 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify HOUSING AUTHORITY, its officers, employees, agents and elected and appointed boards (hereinafter “Indemnified Parties”) for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed “A” or better in the Best’s Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the Housing Authority Attorney**.

10.1.1 <u>Workers’ Compensation and Employer’s Liability</u>

- Workers’ Compensation -- coverage as required by the State of California
- Employer’s Liability -- $1,000,000.00 each accident
  $1,000,000.00 policy limit bodily injury
  $1,000,000.00 each employee bodily injury by disease

10.1.2 <u>Commercial General Liability</u>

- $1,000,000.00 limit on a per occurrence basis
- $2,000,000.00 general aggregate limit

10.1.3 <u>Commercial Automobile Liability</u>

- $1,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.2 All of CONTRACTOR's policies shall contain an endorsement providing that written notice shall be given to HOUSING AUTHORITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

A. An endorsement extending coverage to the HOUSING AUTHORITY as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the HOUSING AUTHORITY, and any other insurance maintained by the HOUSING AUTHORITY shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: "The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale, Palmdale Civic Authority, Housing Authority, Industrial Development Authority, Airport Authority, their officers, agents, employees and volunteers are named as additional insured".

B. "Severability of Interest" Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to HOUSING AUTHORITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured. Within five (5) days of written request from HOUSING AUTHORITY, CONTRACTOR shall deliver to HOUSING AUTHORITY full and complete copies of all insurance policies required by this Contract.

10.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

10.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against HOUSING AUTHORITY.

10.7 All insurance coverage must be maintained throughout the duration of this Contract.

10.8 Acceptable Proof of Insurance:

10.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be

provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

10.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the Housing Authority Attorney.

10.9 Notwithstanding any other provision of this Contract, HOUSING AUTHORITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10.10 CONTRACTOR shall require any and all subcontractor's working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 TERMINATION WITHOUT CAUSE

HOUSING AUTHORITY reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to HOUSING AUTHORITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be HOUSING AUTHORITY’s property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

12 TERMINATION FOR CAUSE

If HOUSING AUTHORITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, HOUSING AUTHORITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for HOUSING AUTHORITY’s dissatisfaction and suggest corrective measures. If, after

thirty days, CONTRACTOR has failed to implement appropriate corrective measures, HOUSING AUTHORITY may elect to terminate this Contract in whole or in part.

12.1 In the event HOUSING AUTHORITY terminates this Contract, in whole or in part, for cause, HOUSING AUTHORITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

12.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to HOUSING AUTHORITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to HOUSING AUTHORITY.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 11.

13 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between HOUSING AUTHORITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

14 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are prepared or produced in the performance of this Contract are to be, and remain the property of HOUSING AUTHORITY and shall be delivered to or left with HOUSING AUTHORITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish HOUSING AUTHORITY, upon its request, originals and reproducible and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows HOUSING AUTHORITY to copy, reproduce and makes changes as HOUSING AUTHORITY deems necessary.

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of HOUSING AUTHORITY; provided, however, that claims for money due or to become due to CONTRACTOR from HOUSING AUTHORITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind HOUSING AUTHORITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. HOUSING AUTHORITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk’s Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the HOUSING AUTHORITY has any interest, financially or otherwise, in CONTRACTOR’s firm.

17.2 For breach or violation of this warranty, HOUSING AUTHORITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18 CONFLICT OF INTEREST

18.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be “financial interested” (as provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by HOUSING AUTHORITY on any matter.

18.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

18.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

19 COMPLIANCE WITH LAW

19.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

19.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

20 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

21.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

21.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

22 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

HOUSING AUTHORITY OF THE CITY OF PALMDALE

SIGNATURE AREA

Ronda Perez
Executive Director

SIGNATURE AREA

ADDRESS FOR NOTICE:
HOUSING AUTHORITY OF THE CITY OF PALMDALE
38250 Sierra Hwy, 2nd Floor
Palmdale, CA 93550

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
Interim Authority Counsel

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting Authority Secretary

M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION:

SIGNATURE AREA

Matthew Brey
President

ADDRESS FOR NOTICE:
M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION
408 Elm Ave,
Beaumont, CA 92223

---------- INTERNAL USE ONLY ----------

□Certificate(s) and Endorsement(s) attached
□Confirmed business name on contract with certificate(s)
□Attached Agreement Checklist and met all requirements

AGREEMENT NO. A-8558
CONTRACT FOR SERVICES
BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PALMDALE AND HOUALLA ENTERPRISES, dba METRO BUILDERS & ENGINEERS GROUP, LTD.

This CONTRACT for services ("Contract" herein) is made and entered into by and between the Housing Authority of the City of Palmdale, a public body corporate and politic, (hereinafter called "HOUSING AUTHORITY"), and HOUALLA ENTERPRISES, dba METRO BUILDERS & ENGINEERS GROUP, LTD., a California Corporation, (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, HOUSING AUTHORITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 HOUSING AUTHORITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of Sophia Reyes Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the Housing Authority project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to HOUSING AUTHORITY:

On-Going General Contractor and Minor Construction Services.

The scope of services assigned to the CONTRACTOR shall include a range of projects from minor requests to significant construction projects, such as remodeling or repair work, at the HOUSING AUTHORITY-owned facilities and that will typically be time sensitive in nature on an as-needed basis.

CONTRACTOR shall provide a full range of construction maintenance, and repair services, including but not limited to:

• Framing and Rough Carpentry
• Finish Carpentry

• Drywall
• Millwork
• Glazing
• Ceramic and Mosaic Tile
• Plumbing
• Electrical
• Painting
• Roofing
• Sheet Metal
• HVAC
• Flooring
• Welding
• Asbestos Abatement
• Lead Abatement
• Masonry

CONTRACTORS regular business hours are Monday through Friday 8:00 a.m. to 5:00 p.m.

All service shall be completed in a workmanlike manner in compliance with all local, state, and federal rules, laws, and regulations, as applicable. CONTRACTOR agrees to remove all debris, trash, and unused materials when leaving the jobsite, leaving it in a broom-clean condition.

Licenses

At all times during the term of this Contract, CONTRACTOR shall possess a Class B General Building Contractors License with the Contractor's State License Board (CSLB) to perform required work. CONTRACTOR'S CSLB license number is 597589 CONTRACTOR'S DIR registration number is 1000002925. CONTRACTOR'S City of Palmdale license number is 11623698. CONTRACTOR hereby certifies that it holds the required license(s).

Prevailing Wage

This Contract calls for work to be performed constituting public works. All labor is to be paid at prevailing wage rates. CONTRACTOR to determine proper wage classification. CONTRACTOR and all subcontractors must be registered with the State of California Department of Industrial Relations (DIR) as a public works contractor for the duration of the agreement and is responsible for any and all registration and/or renewal fees. The HOUSING AUTHORITY will require certified payroll to be submitted and that it may be verified by a 3rd party labor compliance company.
CONTRACTOR acknowledges and understands it must comply with the prevailing

wage requirements as per Exhibit A definition for prevailing wage requirements.

Payment and Performance Bonds

Unless otherwise expressly provided in the bid documents, if any individual project performed under the Contract exceeds $25,000,Contractor shall provide a performance and payment bonds, each in amount equal to 100% of the project. Such bonds is requested by the Housing Authority of the City of Palmdale before work is to be performed on the specified project.

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by HOUSING AUTHORITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by HOUSING AUTHORITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 365 days from the date of acceptance by HOUSING AUTHORITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to HOUSING AUTHORITY. The written warranty shall be included with the delivered products to the using Department.

HOUSING AUTHORITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in HOUSING AUTHORITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** HOUSING AUTHORITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by HOUSING AUTHORITY.

CONTRACTOR's Team and Key Personnel are as follows:

Not Applicable

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by HOUSING AUTHORITY.

3.2 **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of HOUSING AUTHORITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 **Direct Responsibility.** All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by HOUSING AUTHORITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless HOUSING AUTHORITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 CONTRACT TERM

The term of this Contract is TWO (2) YEARS/TWENTY-FOUR MONTHS, commencing on the effective date, with HOUSING AUTHORITY reserving the option to extend the agreement for 1 additional term of one year.

5 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

5.1 **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

5.2 **Property of HOUSING AUTHORI**TY**.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of HOUSING AUTHORITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of HOUSING AUTHORITY.

5.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

6 PRICE

HOUSING AUTHORITY shall pay to CONTRACTOR an amount not to exceed TWO HUNDRED THOUSAND dollars ($200,000.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

Base Labor	Standard Time (Per hour)	Overtime (Per hour)	Double Time (Per hour)
Operator	$ 128.35	$ 165.68	$ 203.01
Ironworker Foremen	$ 138.22	$ 176.24	$ 214.30
Ironworker Journeymen	$ 136.27	$ 168.77	$ 201.26
Laborer Foreman	$ 109.78	$ 143.77	$ 177.76
Laborer Journeymen	$ 96.42	$ 124.29	$ 152.15
Carpenter Foremen	$ 119.72	$ 155.84	$ 191.16
Carpenter Journey	$ 115.76	$ 151.48	$ 187.20
Driver	$ 68.34	$ 102.51	$ 136.69
Electrician Journeymen	$ 119.64	$ 160.24	$ 200.77
Electrical Foremen	$ 145.19	$ 217.78	$ 290.38
Mason Foremen	$ 113.99	$ 147.85	$ 181.04
Mason Journeymen	$ 110.03	$ 143.89	$ 177.08

6.1 An application for payment form must be submitted to HOUSING AUTHORITY which shall include the following: a clear, detailed invoice reflecting

work being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included with the payment requests.

6.2 CONTRACTOR shall maintain adequate records and shall permit inspection and audit by HOUSING AUTHORITY of CONTRACTOR's charges under this Contract. CONTRACTOR shall make such records available to HOUSING AUTHORITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to HOUSING AUTHORITY and any specified public agencies. Such records shall be maintained by CONTRACTOR for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONTRACTOR shall retain its records for the time required by such laws.

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7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of HOUSING AUTHORITY. No person employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of HOUSING AUTHORITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the HOUSING AUTHORITY in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the HOUSING AUTHORITY.

8 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of HOUSING AUTHORITY, its use is subject

to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by HOUSING AUTHORITY in the contract documents. CONTRACTOR shall indemnify and hold harmless HOUSING AUTHORITY and anyone directly or indirectly employed by HOUSING AUTHORITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

9 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify HOUSING AUTHORITY, its officers, employees, agents and elected and appointed boards (hereinafter “Indemnified Parties”) for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed “A” or better in the Best’s Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the Housing Authority Attorney**.

10.1.1 <u>Workers’ Compensation and Employer’s Liability</u>

- Workers’ Compensation -- coverage as required by the State of California
- Employer’s Liability -- $1,000,000.00 each accident
  $1,000,000.00 policy limit bodily injury

$1,000,000.00 each employee bodily injury by disease

10.1.2 Commercial General Liability

- $1,000,000.00 limit on a per occurrence basis
- $2,000,000.00 general aggregate limit

10.1.3 Commercial Automobile Liability

- $1,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.2 All of CONTRACTOR's policies shall contain an endorsement providing that written notice shall be given to HOUSING AUTHORITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

A. An endorsement extending coverage to the HOUSING AUTHORITY as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the HOUSING AUTHORITY, and any other insurance maintained by the HOUSING AUTHORITY shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: "The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale, Palmdale Civic Authority, Housing Authority, Industrial Development Authority, Airport Authority, their officers, agents, employees and volunteers are named as additional insured".

B. "Severability of Interest" Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to HOUSING AUTHORITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured. Within five (5) days of written request from HOUSING AUTHORITY, CONTRACTOR shall deliver to HOUSING AUTHORITY full and complete copies of all insurance policies required by this Contract.

10.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

10.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against HOUSING AUTHORITY.

10.7 All insurance coverage must be maintained throughout the duration of this Contract.

10.8 Acceptable Proof of Insurance:

10.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

10.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the Housing Authority Attorney.

10.9 Notwithstanding any other provision of this Contract, HOUSING AUTHORITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10.10 CONTRACTOR shall require any and all subcontractor's working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 TERMINATION WITHOUT CAUSE

HOUSING AUTHORITY reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to HOUSING AUTHORITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be HOUSING AUTHORITY’s property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

12 TERMINATION FOR CAUSE

If HOUSING AUTHORITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, HOUSING AUTHORITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for HOUSING AUTHORITY's dissatisfaction and suggest corrective measures. If, after thirty days, CONTRACTOR has failed to implement appropriate corrective measures, HOUSING AUTHORITY may elect to terminate this Contract in whole or in part.

12.1 In the event HOUSING AUTHORITY terminates this Contract, in whole or in part, for cause, HOUSING AUTHORITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

12.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to HOUSING AUTHORITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to HOUSING AUTHORITY.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 11.

13 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between HOUSING AUTHORITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

14 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are prepared or produced in the performance of this Contract are to be, and remain the property of HOUSING AUTHORITY and shall be delivered to or left with HOUSING AUTHORITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish HOUSING AUTHORITY, upon its request, originals and reproducible

and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows HOUSING AUTHORITY to copy, reproduce and makes changes as HOUSING AUTHORITY deems necessary.

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of HOUSING AUTHORITY; provided, however, that claims for money due or to become due to CONTRACTOR from HOUSING AUTHORITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind HOUSING AUTHORITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. HOUSING AUTHORITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk’s Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the HOUSING AUTHORITY has any interest, financially or otherwise, in CONTRACTOR's firm.

17.2 For breach or violation of this warranty, HOUSING AUTHORITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18 CONFLICT OF INTEREST

18.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be "financial interested" (as provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by HOUSING AUTHORITY on any matter.

18.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

18.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

19 COMPLIANCE WITH LAW

19.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

19.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

20 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

21.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

21.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

22 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

HOUSING AUTHORITY OF THE CITY OF PALMDALE

SIGNATURE AREA

Ronda Perez
Executive Director

SIGNATURE AREA

ADDRESS FOR NOTICE:
HOUSING AUTHORITY OF THE CITY OF PALMDALE
38250 Sierra Hwy, 2nd Floor
Palmdale, CA 93550

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
Interim Authority Counsel

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting Authority Secretary

HOUALLA ENTERPRISES, dba METRO BUILDERS & ENGINEERS GROUP, LTD.:

SIGNATURE AREA

Fouad Houalla
President

ADDRESS FOR NOTICE:
HOUALLA ENTERPRISES, dba METRO BUILDERS & ENGINEERS GROUP, LTD.
2610 Avon Street
Newport Beach, CA 92663

---------- INTERNAL USE ONLY ----------

□Certificate(s) and Endorsement(s) attached
□Confirmed business name on contract with certificate(s)
□Attached Agreement Checklist and met all requirements

AGREEMENT NO. A-8565
CONTRACT FOR SERVICES
BETWEEN THE HOUSING AUTHORITY OF THE CITY OF PALMDALE AND NASH CONSTRUCTION SERVICES INC.

This CONTRACT for services ("Contract" herein) is made and entered into by and between the Housing Authority of the City of Palmdale, a public body corporate and politic, (hereinafter called "HOUSING AUTHORITY"), and NASH CONSTRUCTION SERVICES INC., a California Corporation, (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, HOUSING AUTHORITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 HOUSING AUTHORITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of Sophia Reyes Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the Housing Authority project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to HOUSING AUTHORITY:

On-Going General Contractor and Minor Construction Services.

The scope of services assigned to the CONTRACTOR shall include a range of projects from minor requests to significant construction projects, such as remodeling or repair work, at HOUSING AUTHORITY-owned facilities and that will typically be time sensitive in nature on an as-needed basis.

CONTRACTOR shall provide a full range of construction maintenance, and repair services, including but not limited to:

- Framing and Rough Carpentry
- Finish Carpentry
- Drywall
- Millwork

• Glazing
• Ceramic and Mosaic Tile
• Plumbing
• Electrical
• Painting
• Roofing
• Sheet Metal
• HVAC
• Flooring
• Welding
• Asbestos Abatement
• Lead Abatement
• Masonry

CONTRACTORS regular business hours are Monday through Friday 8:00 a.m. to 5:00 p.m.

All service shall be completed in a workmanlike manner in compliance with all local, state, and federal rules, laws, and regulations, as applicable. CONTRACTOR agrees to remove all debris, trash, and unused materials when leaving the jobsite, leaving it in a broom-clean condition.

Licenses

At all times during the term of this Contract, CONTRACTOR shall possess a Class B General Building Contractors License with the Contractor's State License Board (CSLB) to perform required work. CONTRACTOR'S CSLB license number is 918613 CONTRACTOR'S DIR registration number is 10000064846. CONTRACTOR'S City of Palmdale license number is 11608156. CONTRACTOR hereby certifies that it holds the required license(s).

Prevailing Wage

This Contract calls for work to be performed constituting public works. All labor is to be paid at prevailing wage rates. CONTRACTOR to determine proper wage classification. CONTRACTOR and all subcontractors must be registered with the State of California Department of Industrial Relations (DIR) as a public works contractor for the duration of the agreement and is responsible for any and all registration and/or renewal fees. The HOUSING AUTHORITY will require certified payroll to be submitted and that it may be verified by a 3rd party labor compliance company.
CONTRACTOR acknowledges and understands it must comply with the prevailing wage requirements as per Exhibit A definition for prevailing wage requirements.

Payment and Performance Bonds

Unless otherwise expressly provided in the bid documents, if any individual project performed under the Contract exceeds $25,000,Contractor shall provide a performance and payment bonds, each in amount equal to 100% of the project. Such bonds is requested by the CITY before work is to be performed on the specified project.

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by HOUSING AUTHORITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by HOUSING AUTHORITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 365 days from the date of acceptance by HOUSING AUTHORITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to HOUSING AUTHORITY. The written warranty shall be included with the delivered products to the using Department.

HOUSING AUTHORITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in HOUSING AUTHORITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** HOUSING AUTHORITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by HOUSING AUTHORITY.

CONTRACTOR's Team and Key Personnel are as follows:

Not Applicable

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by HOUSING AUTHORITY.

3.2 **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of HOUSING AUTHORITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 **Direct Responsibility.** All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by HOUSING AUTHORITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless HOUSING AUTHORITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 CONTRACT TERM

The term of this Contract is TWO (2) YEAR/TWENTY-FOUR MONTHS, commencing on the effective date, with HOUSING AUTHORITY reserving the option to extend the agreement for 1 additional term of one year.

5 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

5.1 **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

5.2 **Property of HOUSING AUTHORI**TY**.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of HOUSING AUTHORITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of HOUSING AUTHORITY.

5.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

6 PRICE

HOUSING AUTHORITY shall pay to CONTRACTOR an amount not to exceed TWO HUNDRED THOUSAND dollars ($200,000.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

PREVAILING WAGE HOURLY RATE FEE SCHEDULE

PROJECT: RFQA: 23-001-3900

CRAFT	HOURLY REGULAR TIME	HOURLY OVERTIME	DOUBLE TIME/ EMERGENCY	HOLIDAY
GROUP 1 LABORER	$125.00	$185.00	$250.00	$250.00
ELECTRICIAN	$125.00	$185.00	$250.00	$250.00
CARPENTER	$150.00	$225.00	$300.00	$300.00
PLUMBING	$150.00	$225.00	$300.00	$300.00
PAINTER AV	$125.00	$185.00	$250.00	$25.00
DRYWALL INSTALLER	$125.00	$185.00	$250.00	$250.00
DRYWALL FINISHER	$100.00	$150.00	$200.00	$200.00

NECESSARY EQUIPMENT RENTALS AND MATERIALS TO BE BILLED AT ACTUAL COST.
SUPERVISOR RATES ARE THE SAME AS THE CORRESPONDING CRAFT
PRICES ARE IN EFFECT UNTIL THE NEXT WAGE INCREASE IN EACH CRAFT AND CLASSIFICATION

6.1 An application for payment form must be submitted to HOUSING AUTHORITY which shall include the following: a clear, detailed invoice reflecting work being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included with the payment requests.

6.2 CONTRACTOR shall maintain adequate records and shall permit inspection and audit by HOUSING AUTHORITY of CONTRACTOR's charges under this Contract. CONTRACTOR shall make such records available to HOUSING AUTHORITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to HOUSING AUTHORITY and any specified public agencies. Such records shall be maintained by CONTRACTOR for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONTRACTOR shall retain its records for the time required by such laws.

6.3 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of HOUSING AUTHORITY. No person employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of HOUSING AUTHORITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the HOUSING AUTHORITY in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the HOUSING AUTHORITY.

8 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program,

product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of HOUSING AUTHORITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by HOUSING AUTHORITY in the contract documents. CONTRACTOR shall indemnify and hold harmless HOUSING AUTHORITY and anyone directly or indirectly employed by HOUSING AUTHORITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

9 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify HOUSING AUTHORITY, its officers, employees, agents and elected and appointed boards (hereinafter “Indemnified Parties”) for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed “A” or better in the Best’s Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the Housing Authority Attorney**.

10.1.1 <u>Workers’ Compensation and Employer’s Liability</u>

- Workers’ Compensation -- coverage as required by the State of California

- Employer's Liability -- $1,000,000.00 each accident
  $1,000,000.00 policy limit bodily injury
  $1,000,000.00 each employee bodily injury by disease

10.1.2 Commercial General Liability
- $1,000,000.00 limit on a per occurrence basis
- $2,000,000.00 general aggregate limit

10.1.3 Commercial Automobile Liability
- $1,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.2 All of CONTRACTOR's policies shall contain an endorsement providing that written notice shall be given to HOUSING AUTHORITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

A. An endorsement extending coverage to the HOUSING AUTHORITY as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the HOUSING AUTHORITY, and any other insurance maintained by the HOUSING AUTHORITY shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: "The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale, Palmdale Civic Authority, Housing Authority, Industrial Development Authority, Airport Authority, their officers, agents, employees and volunteers are named as additional insured".

B. "Severability of Interest" Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to HOUSING AUTHORITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured. Within five (5) days of written request from HOUSING AUTHORITY, CONTRACTOR shall deliver to HOUSING AUTHORITY full and complete copies of all insurance policies required by this Contract.

10.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

10.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal

property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against HOUSING AUTHORITY.

10.7 All insurance coverage must be maintained throughout the duration of this Contract.

10.8 Acceptable Proof of Insurance:

10.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

10.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the Housing Authority Attorney.

10.9 Notwithstanding any other provision of this Contract, HOUSING AUTHORITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10.10 CONTRACTOR shall require any and all subcontractor's working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 TERMINATION WITHOUT CAUSE

HOUSING AUTHORITY reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to HOUSING AUTHORITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be HOUSING AUTHORITY's property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event

shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

12 TERMINATION FOR CAUSE

If HOUSING AUTHORITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, HOUSING AUTHORITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for HOUSING AUTHORITY's dissatisfaction and suggest corrective measures. If, after thirty days, CONTRACTOR has failed to implement appropriate corrective measures, HOUSING AUTHORITY may elect to terminate this Contract in whole or in part.

12.1 In the event HOUSING AUTHORITY terminates this Contract, in whole or in part, for cause, HOUSING AUTHORITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

12.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to HOUSING AUTHORITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to HOUSING AUTHORITY.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 11.

13 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between HOUSING AUTHORITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

14 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are

prepared or produced in the performance of this Contract are to be, and remain the property of HOUSING AUTHORITY and shall be delivered to or left with HOUSING AUTHORITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish HOUSING AUTHORITY, upon its request, originals and reproducible and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows HOUSING AUTHORITY to copy, reproduce and makes changes as HOUSING AUTHORITY deems necessary.

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of HOUSING AUTHORITY; provided, however, that claims for money due or to become due to CONTRACTOR from HOUSING AUTHORITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind HOUSING AUTHORITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. HOUSING AUTHORITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive

Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk's Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the HOUSING AUTHORITY has any interest, financially or otherwise, in CONTRACTOR's firm.

17.2 For breach or violation of this warranty, HOUSING AUTHORITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18 CONFLICT OF INTEREST

18.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be "financial interested" (as provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by HOUSING AUTHORITY on any matter.

18.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

18.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

19 COMPLIANCE WITH LAW

19.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

19.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

20 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

21.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

21.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

22 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

HOUSING AUTHORITY OF THE CITY OF PALMDALE

SIGNATURE AREA

Ronda Perez
Executive Director

SIGNATURE AREA

ADDRESS FOR NOTICE:
HOUSING AUTHORITY OF THE CITY OF PALMDALE
38250 Sierra Highway, 2nd Floor
Palmdale, CA 93550

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
Interim Authority Counsel

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting Authority Secretary

NASH CONSTRUCTION SERVICES INC.:

SIGNATURE AREA

Harold Lester Nash
President

ADDRESS FOR NOTICE:
NASH CONSTRUCTION SERVICES INC.
32128 Crystalaire Drive
Llano, CA 93544

---------- INTERNAL USE ONLY ----------

□Certificate(s) and Endorsement(s) attached
□Confirmed business name on contract with certificate(s)
□Attached Agreement Checklist and met all requirements

Housing Authority
Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE CHAIR AND COMMISSIONERS**

FROM: **NEIGHBORHOOD SERVICES DEPARTMENT**
HOUSING DIVISION

DISTRICT: **ALL**

SUBJECT: **ADOPT RESOLUTION NO. HA 2023-004 A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF PALMDALE APPROVING THE SALE OF 38553 4TH STREET EAST, APN 3008-016-902, AT THE APPRAISED VALUE TO AN ELIGIBLE HOUSEHOLD, AND TO PROVIDE A LOAN FROM PROCEEDS OR PERMANENT LOCAL HOUSING ALLOCATION FUNDS (PLHA) TO MEET AFFORDABILITY REQUIREMENTS**

ISSUE

Adopt Resolution No. HA 2023-004 a Resolution of the Housing Authority of the City of Palmdale approving the sale of 38553 4th Street East, APN 3008-016-902 at the appraised value to an eligible household, and to provide a loan from proceeds or Permanent Local Housing Allocation funds (PLHA) to meet affordability requirements.

RECOMMENDATION

Staff recommends that the City Council:

1. Adopt Resolution No. HA 2023-004 approving the sale of 38553 4th Street East, APN 3008-016-902 at the appraised value to an eligible household, and to provide a loan from proceeds or Permanent Local Housing Allocation funds (PLHA) to meet affordability requirements.
2. Authorize the Executive Director or their designee to enter into proposed agreements as described herein, with such minor changes as may be approved by the Executive Director with approval as to form by Authority Legal Counsel, execute all documents and take all actions necessary and convenient to dispose of the property and to administer the Housing Authority's obligations, responsibilities and duties to be performed thereunder.

BACKGROUND

The former Community Redevelopment Agency of the City of Palmdale (Redevelopment Agency) entered into an Affordable Housing Agreement dated April 28, 2004, with subsequent amendments, with Group Home Consultants in an effort to develop

affordable single family in-fill housing in Focus Neighborhood No. 3. The former Redevelopment Agency was dissolved on February 1, 2012. Pursuant to the Dissolution Act, on January 2, 2012 the City Council of the City of Palmdale designated the Housing Authority of the City of Palmdale (Housing Authority) as the entity responsible for performing the housing functions previously performed by the former Redevelopment Agency. The Housing Authority reacquired the property from Group Home Consultants on October 2, 2013.

Focus Neighborhood No. 3 was designated as a focus neighborhood to provide targeted services to improve the housing conditions and the physical and social environment of the residents who are predominantly low-income households. The house was utilized as a designated Neighborhood House and was named “Gabriel’s House” with the purpose of providing not only affordable housing services to the community but also served as a Music and Performing Arts Neighborhood House to provide children in the neighborhood the opportunity to develop their musical and performing talents. The Music program provided by Music and Kids is being provided at the Courson Arts Colony East Apartments.

DISCUSSION

The Housing Authority wishes to resell the property located at 38553 4th Street East, acquired with Redevelopment Agency Low Moderate Income Housing Funds, to an eligible household in compliance with the affordability requirements of the Health and Safety Code. To meet the affordability requirement, a note and second deed of trust, based on need, in an amount not to exceed the lesser of $200,000 or 50% of the purchase price of the property, for downpayment assistance and closing costs, to make the monthly housing costs affordable. The terms of the loan will be for 45 years, at zero interest, with an equity share based on the appraised value of the sale price. In addition, assistance for closing costs may not exceed 5% of the sale price, and loans in total may not exceed 100% of the sale price. The purchaser must provide 1% of the down payment funds required by their primary lender. Documents including but not limited to deeds of trust, covenants for affordability, maintenance, and/or recapture of funds will be recorded on the property.

FISCAL IMPACT

$425,000 sale price, $200,000 downpayment assistance, $5000 Seller closing costs; Property will be sold at the appraised value. Funds for seller’s closing costs are available in account 29364005-782902 Focus Neighborhood 1-4. To assist homebuyers with affordability, funds not to exceed $200,000 are to be loaned from proceeds from the sale of the property or from the City Permanent Local Housing Allocation (PLHA) funds.

STRATEGIC PLAN

Goal II: Ensure long term fiscal health of the City and maintain funding for services.

A. Manage resources, costs and liabilities to ensure the City's long-term fiscal health.

Prepared by:	Heather Nichols, Senior Housing Coordinator
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Executive Director
Approved as to form:	William P. Curley, Authority Counsel

ATTACHMENTS

1. Resolution HA 2023-004

HOUSING AUTHORITY
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. HA 2023-004

A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF PALMDALE APPROVING THE DISPOSITION OF 38553 4TH STREET EAST, APN 3008-016-902

WHEREAS, the Housing Authority of the City of Palmdale ("Housing Authority") is implementing certain proposed uses in the Merged Project Area including low-income housing, which will aid in carrying out the Redevelopment Plan, pursuant to its obligations under Assembly Bill No. 26 (2011-2012 1st Ex. Sess.), as amended by Assembly Bill No. 1484 (2011-2012 Regular Session) and as further amended from time to time (collectively, the "Dissolution Bills") wherein the Authority, as the designated entity, will perform the housing functions previously performed by the former Redevelopment Agency to carry out the purposes of the Redevelopment Plan and the Dissolution Bills; and

WHEREAS, the former Community Redevelopment Agency of the City of Palmdale (Redevelopment Agency) entered into an Affordable Housing Agreement dated April 28, 2004, with subsequent amendments, with Group Home Consultants in an effort to develop affordable single family in-fill housing in Focus Neighborhood No. 3. The former Redevelopment Agency was dissolved on February 1, 2012. Pursuant to the Dissolution Act, on January 2, 2012 the City Council of the City of Palmdale designated the Housing Authority of the City of Palmdale as the entity responsible for performing the housing functions previously performed by the former Redevelopment Agency. The Housing Authority reacquired the property from Group Home Consultants on October 2, 2013.

NOW THEREFORE, BE IT RESOLVED, THE HOUSING AUTHORITY OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The Housing Authority wishes to resell the property located at 38553 4th Street East acquired with Redevelopment Agency Low Moderate Income Housing Funds to an eligible household in compliance with the affordability requirements of the Health and Safety Code. To meet the affordability requirement downpayment assistance, in the form of a note and second deed of trust based on need, in an amount not to exceed the lesser of $200,000 or 50% of the purchase price of the property plus closing costs. The terms of the loan will be for 45 years, at zero interest, with an equity share based on appraised value of the sale price. In addition, assistance for closing costs may not exceed 5% of the sale price, and loans in total may not exceed 100% of sale price. Purchaser must provide 1% of the down payment funds required by their primary lender. Documents including but not limited to deeds of trust, covenants for affordability, maintenance and/or recapture of funds will be recorded on the property.

Funds to be loaned from proceeds from the sale of the property or from the City of Palmdale Permanent Local Housing (PLHA) funds.

SECTION 2. The Authority Board hereby authorizes the Executive Director or their designee to enter into proposed agreements as described herein, with such minor changes as may be approved by the Executive Director with approval as to form by Authority Legal Counsel, execute all documents and take all actions necessary and convenient to dispose of the property and to administer the Housing Authority's obligations, responsibilities and duties to be performed thereunder.

SECTION 3. The Authority Secretary shall certify to the adoption of this resolution.

PASSED, APPROVED and **ADOPTED** this 15th day of November, 2023.

_____
Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

_____
William P. Curley, III
Authority Attorney

_____
Rochelle Scott, Acting Authority Secretary

I, Rochelle Scott, Acting Authority Secretary of the Housing Authority of the City of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the Housing Authority of the City of Palmdale at a special meeting of said Authority held on the 15th day of November by the following roll call vote:

AYES: _____

NOES:_____

ABSTAIN:_____ABSENT:_____

Date: _____

_____
Rochelle Scott, Acting Authority Secretary

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **FINANCE DEPARTMENT**
HUMAN RESOURCES DIVISION

DISTRICT: **ALL**

SUBJECT: **ADOPT RESOLUTION NO. CC 2023-075, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE AMENDING THE CITY'S CLASSIFICATION AND PAY PLAN FOR GENERAL POSITIONS; ADOPT RESOLUTION NO. CC 2023-076, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE AMEDNING THE CITY'S CLASSIFICATION AND PAY PLAN FOR BARGAINING UNIT POSITIONS; AND ADOPT RESOLUTION NO. CC 2023-037, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE ESTABLISHING DIRECTOR/EXECUTIVE EMPLOYEES' COMPENSATION, BENEFITS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT.**

ISSUE

Adopt Resolution No. CC 2023-075, a Resolution of the City Council of the City of Palmdale amending the City's Classification and Pay Plan for General Positions; Adopt Resolution No. CC 2023-076, a Resolution of the City Council of the City of Palmdale amending the City's Classification and Pay Plan for Bargaining Unit Positions; and Adopt Resolution No. CC 2023-037, a Resolution of the City Council of the City of Palmdale Establishing Director/Executive Employees' Compensation, Benefits, and Other Terms and Conditions of Employment.

RECOMMENDATION

Staff recommends that the City Council:

1. Adopt Resolution No. CC 2023-075, a Resolution of the City Council of the City of Palmdale amending the City's Classification and Pay Plan for General Positions;
2. Adopt Resolution No. CC 2023-076, a Resolution of the City Council of the City of Palmdale amending the City's Classification and Pay Plan for Bargaining Unit Positions; and
3. Adopt Resolution No. CC 2023-037, a Resolution of the City Council of the City of Palmdale Establishing Director/Executive Employees' Compensation, Benefits, and Other Terms and Conditions of Employment.

BACKGROUND

The City Manager, in collaboration with the Human Resources division, monitors and evaluates positions within the organization and makes recommendations based on the needs of the City.

DISCUSSION

As City Management continues to evaluate the organization in an effort to increase efficiency and enhance our ability to serve the community, several changes are being proposed, as outlined below.

Classification and Pay Plan for General Positions

It is requested that the City add a City Clerk position, under the direction of the City Manager's Department. This position will provide a strong level of leadership, direct, develop, and coordinate policies and staff, and ensure legal compliance in the City Clerk's Office.

The Director of Finance title will be changed to Director of Operations. This title change will align with the responsibilities and areas of oversight, which include the Finance, Information Technology, Human Resources, and Purchasing & Risk Management Divisions. There is no change in salary proposed.

A Public Safety Director is being requested to oversee the Public Safety Department, which will include Code Enforcement, Community Service Officers, Neighborhood Compliance Officers, Public Safety Officers, and Public Safety Outreach.

Upgrades of one (1) Office Assistant, and one (1) Administrative Assistant in the Public Safety and Public Works departments, respectively, to Sr. Administrative Assistants. These departments currently do not have senior administrative support. The proposed upgrades will provide high-level support to the departments and Directors, alleviating time spent on administrative functions, and thus allowing staff and management to focus on programs and projects.

It is proposed that the Classification and Pay Plan be amended to reflect a change in the pay range for the Senior Civil Engineer Position from a Range 40 to a Range 42. The City has had vacancies in this position for over two years and has exhausted all efforts to fill this position, including hiring an executive recruiting firm. A comparison was done for this position, in which the City looked at multiple municipalities of similar size and demographics. It was found that the City of Palmdale pays 15% to 20% lower than surrounding agencies, including Lancaster, Victorville, and Santa Clarita. The fiscal impact associated with this action would be an increase in salary cost of approximately $11,000 annually.

Classification and Pay Plan for Bargaining Unit Positions

It is requested that the Classification and Pay Plan for Bargaining Unit Employees is amended to include classifications for Traffic Signal Technicians I, II and Senior. The Traffic Signals Division will transfer from the Engineering Division to the Maintenance Division.

Director/Executive Employee's Terms and Conditions of Employment

Resolution No. CC 2023-037 is proposed to establish Terms and Conditions of Employment for executive-level staff.

The City currently has individual Employment Agreements with each of its Directors and Executive Employees. In an effort to streamline the agreements and have the terms and conditions for its upper management apply to each of them fairly, staff recommends having one resolution apply uniformly to the City's Directors and Executive Employees.

The City Manager and City Attorney will continue to have their own individual Employment Agreement with the City Council.

Unless otherwise noted, there is no change to the benefits. In general, the resolution to adopt the establishment of the terms and conditions of employment for the City's Directors and Executive Employees provides for the following:

1. Classifications Covered. The following Director / Executive Management classifications shall be covered under the provisions of this Resolution:

- Assistant City Manager
- Deputy City Manager
- Director of Operations
- Director of Economic & Community Development
- Director of Finance
- Director of Neighborhood Services
- Director of Parks & Recreation
- Director of Public Safety
- Director of Public Works

2. Pay Increase**.** The City Manager has the discretion to authorize pay increases within the approved steps of the Classification and Pay Plan.

3. Employment Status. All employees covered by this Resolution shall serve at the pleasure of the City Manager and may be terminated at any time with or without cause and without any right to pre or post-termination hearings. In the event an employee is terminated without cause, the City shall pay the employee severance in the amount not to exceed six (6) month's salary. Employees terminated for

cause or voluntarily resign from their position are not entitled to severance benefits.

4. Deferred Compensation. All employees covered under this Resolution shall be eligible to enroll in the City's Deferred Compensation 457(b) Plan. The City shall annually contribute five thousand dollars ($5,000) to participating employees, such amount to be equally contributed per pay period to each pay period established by the City.

5. Auto Allowance. The following classifications shall be eligible for an auto allowance:
   - Deputy City Manager: $200 monthly
   - Director: $200 monthly
   - Assistant City Manager: $400 monthly

6. UCLA Physical. All employees covered by this Resolution shall be entitled to one executive physical every other fiscal year at the UCLA medical facilities.

7. Accrued Leave. Employees covered under this Resolution shall accrue the following leaves:
   - Vacation: Employees shall accrue vacation leave at the rate of 160 hours annually
   - Sick Leave: Employees shall accrue sick leave at the rate of 96 hours annually
   - Administrative Leave: Employees shall accrue administrative leave at the rate of 96 hours annually

8. Medical, Dental, and Vision Insurance. All classifications covered by this Resolution shall continue to receive the same Medical, Dental and Vision Insurance as General Employees.

FISCAL IMPACT

There is no fiscal impact in FY 2023-24. Funds are budgeted and available in the various department/division Salary and Benefit accounts, as the result of vacancy savings during the year. The ongoing fiscal impact is anticipated to be an increase of approximately $452,500 in salary and benefits.

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

B. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health.

C. Involve and expand engagement to enhance public oversight and transparency.

Prepared by:	Janelle Samson, Director of Finance
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, City Attorney

ATTACHMENTS

1. Resolution No. CC 2023-075
2. Resolution No. CC 2023-076
3. Resolution No. CC 2023-037

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-075

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE AMENDING THE CITY'S CLASSIFICATION AND PAY PLAN FOR GENERAL POSITIONS

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The City's Classification and Pay Plan for General Positions is amended as set forth in the attached Exhibit #1 and Exhibit #2.

SECTION 2. The City Clerk shall certify the passage and adoption of this resolution Amending the City's Classification and Pay Plan for General Positions. It is deemed to be effective November 15, 2023.

SECTION 3. The City Clerk shall certify to the adoption of this resolution.

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PASSED, APPROVED and **ADOPTED** this 15th day of November, 2023.

_____
Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

_____
William P. Curley, III
City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES:_____

ABSTAIN:_____ABSENT:_____

Date: _____ _____
Rochelle Scott, Acting City Clerk

Revised November 15, 2023

CLASSIFICATION AND PAY PLAN – GENERAL POSITIONS
FY 2023 – 2024

TITLE	RANGE Hourly	RANGE #
Intern	$17.00- $19.17 per hour	14
Program Aide	$17.00- $19.17 per hour	14
Administrative Intern	$18.61 – $23.76 per hour	18
Records Management Clerk I	$18.61 – $23.76 per hour	18
Public Security Officer	$18.61 – $23.76 per hour	18
Office Assistant I	$20.52 – $26.19 per hour	20
Records Management Clerk II	$20.52 – $26.19 per hour	20
Senior Public Security Officer	$20.52 – $26.19 per hour	20
SAVES Assistant	$22.63 – $28.88 per hour	22
Senior Records Management Clerk	$22.63 – $28.88 per hour	22
Neighborhood Compliance Officer	$24.95 – $31.85 per hour	24
Theater Operations Technician	$24.95 – $31.85 per hour	24
Senior Neighborhood Compliance Officer	$27.51 – $35.11 per hour	26
Theater Operations Coordinator	$27.51 – $35.11 per hour	26
Administrative Assistant	$28.88 – $36.86 per hour	27

TITLE	RANGE Monthly	RANGE #
Office Assistant I	$3,557 - $4,540	20
Senior Public Security Officer	$3,557 - $4,540	20
Account Clerk I	$3,923 - $5,006	22
Office Assistant II	$3,923 - $5,006	22
SAVES Assistant	$3,923 - $5,006	22
Account Clerk II	$4,325 - $5,521	24
Audio Technician	$4,325 - $5,521	24
Neighborhood Compliance Officer	$4,325 - $5,521	24
Public Safety Technician	$4,325 - $5,521	24
Records Management Specialist	$4,325 - $5,521	24
Community Compliance Aide I	$4,768 - $6,086	26
Community Service Officer	$4,768 - $6,086	26
Development Technician I	$4,768 - $6,086	26
Information Technology Technician I	$4,768 - $6,086	26
Senior Account Clerk	$4,768 - $6,086	26
Theater Operations Coordinator	$4,768 - $6,086	26
Administrative Assistant	$5,006 - $6,389	27
Management Aide	$5,006 - $6,389	27
Business License Coordinator	$5,255 - $6,711	28
Community Compliance Aide II	$5,255 - $6,711	28
Community Development Technician II	$5,255 - $6,711	28
Financial Technician	$5,255 - $6,711	28
Information Technology Technician II	$5,255 - $6,711	28

Revised November 15, 2023

TITLE	RANGE Monthly	RANGE #
Payroll Specialist	$5,255 - $6,711	28
Public Safety Specialist	$5,255 - $6,711	28
Housing Technician	$5,521 - $7,044	29
SAVES Coordinator	$5,521 - $7,044	29
Senior Administrative Assistant	$5,521 - $7,044	29
Senior Community Development Technician	$5,521 - $7,044	29
Supervising Public Security Officer	$5,521 - $7,044	29
Building Inspector I	$5,796 - $7,398	30
Economic Development Coordinator	$5,796 - $7,398	30
Engineering Technician I	$5,796 - $7,398	30
Plan Reviewer Aide	$5,796 - $7,398	30
Planning Aide	$5,796 - $7,398	30
Public Works Inspector I	$5,796 - $7,398	30
Recreation Coordinator	$5,796 - $7,398	30
Senior Payroll Specialist	$5,796 - $7,398	30
Buyer	$6,086 - $7,769	31
City Council Legislative Aide	$6,086 - $7,769	31
Code Enforcement Officer I	$6,086 - $7,769	31
Community Compliance Specialist	$6,086 - $7,769	31
Deputy City Clerk	$6,086 - $7,769	31
Digital Media Specialist	$6,086 - $7,769	31
Environmental Compliance Inspector	$6,086 - $7,769	31
Executive Assistant	$6,086 - $7,769	31
Human Resources Specialist	$6,086 - $7,769	31
Neighborhood Services Specialist	$6,086 - $7,769	31
Traffic Signal & Streetlight Technician I	$6,086 - $7,769	31
Assistant Planner	$6,389 - $8,155	32
Building Inspector II	$6,389 - $8,155	32
Engineering Technician II	$6,389 - $8,155	32
Information Technology Specialist	$6,389 - $8,155	32
Public Works Inspector II	$6,389 - $8,155	32
Supervising Community Development Technician	$6,389 - $8,155	32
Assistant Engineer I	$6,711 - $8,564	33
Code Enforcement Officer II	$6,711 - $8,564	33
Collection System Maintenance Planner	$6,711 - $8,564	33
Community Compliance Coordinator	$6,711 - $8,564	33
GIS Analyst	$6,711 - $8,564	33
Human Resources Analyst I	$6,711 - $8,564	33
Legal and Risk Coordinator	$6,711 - $8,564	33
Management Analyst I	$6,711 - $8,564	33
Recreation Supervisor	$6,711 - $8,564	33
Senior Buyer	$6,711 - $8,564	33
Traffic Signal & Streetlight Technician II	$6,711 - $8,564	33
Associate Planner	$7,044 - $8,993	34
Plan Reviewer	$7,044 - $8,993	34
Senior Building Inspector	$7,044 - $8,993	34
Senior Engineering Technician	$7,044 - $8,993	34
Senior Public Works Inspector	$7,044 - $8,993	34

Revised November 15, 2023

TITLE	RANGE Monthly	RANGE #
Assistant Engineer II	$7,398 - $9,443	35
Assessment District Specialist	$7,398 - $9,443	35
City Council Chief of Staff	$7,398 - $9,443	35
Community Programs Coordinator	$7,398 - $9,443	35
Financial Analyst	$7,398 - $9,443	35
Housing Coordinator	$7,398 - $9,443	35
Human Resources Analyst II	$7,398 - $9,443	35
Information Technology Analyst I	$7,398 - $9,443	35
Asset Management Specialist	$7,398 - $9,443	35
Management Analyst II	$7,398 - $9,443	35
Marketing & Digital Specialist	$7,398 - $9,443	35
Media Production Specialist	$7,398 - $9,443	35
Paralegal	$7,398 - $9,443	35
Senior Code Enforcement Officer	$7,398 - $9,443	35
Senior Traffic Signal & Streetlight Technician	$7,398 - $9,443	35
Water Park Supervisor	$7,398 - $9,443	35
Collection System Superintendent	$7,769 - $9,915	36
Community Compliance Supervisor	$7,769 - $9,915	36
Facilities Superintendent	$7,769 - $9,915	36
Fleet Superintendent	$7,769 - $9,915	36
Landscape Superintendent	$7,769 - $9,915	36
Parks Superintendent	$7,769 - $9,915	36
Public Safety Supervisor	$7,769 - $9,915	36
Senior Financial Analyst	$7,769 - $9,915	36
Associate Engineer	$8,155 - $10,402	37
Information Technology Analyst II	$8,155 - $10,402	37
Public Art Program Manager	$8,155 - $10,402	37
Public Works Project Manager	$8,155 - $10,402	37
Senior Housing Coordinator	$8,155 - $10,402	37
Senior Human Resources Analyst	$8,155 - $10,402	37
Senior Management Analyst	$8,155 - $10,402	37
Senior Planner	$8,155 - $10,402	37
Senior Plan Reviewer	$8,155 - $10,402	37
Supervising Building Inspector	$8,155 - $10,402	37
Supervising Financial Analyst	$8,155 - $10,402	37
Supervising Public Works Inspector	$8,155 - $10,402	37
Budget Officer	$8,564 - $10,930	38
Deputy Public Information Officer	$8,564 - $10,930	38
Diversity, Equity & Inclusion Specialist	$8,564 - $10,930	38
Purchasing & Contracts Manager	$8,564 - $10,930	38
Safety Officer	$8,564 - $10,930	38
Street Superintendent	$8,564 - $10,930	38
Traffic Signal & Streetlight Manager	$8,564 - $10,930	38
GIS Coordinator	$8,993 - $11,476	39
Senior Information Technology Analyst	$8,993 - $11,476	39
Senior Public Works Project Manager	$8,993 - $11,476	39

Revised November 15, 2023

TITLE	RANGE Monthly	RANGE #
Community Compliance Manager	$9,443 - $12,052	40
Community Programs Manager	$9,443 - $12,052	40
Deputy City Attorney	$9,443 - $12,052	40
Emergency Services Administrator	$9,443 - $12,052	40
Energy Resources Manager	$9,443 - $12,052	40
Engineering Manager	$9,443 - $12,052	40
Innovation and Environmental Manager	$9,443 - $12,052	40
Housing Manager	$9,443 - $12,052	40
Principal Planner	$9,443 - $12,052	40
Recreation Manager	$9,443 - $12,052	40
Senior Engineer	$9,443 - $12,052	40
Traffic Manager	$9,443 - $12,052	40
Assistant to the City Manager	$9,915 - $12,653	41
City Clerk	$9,915 - $12,653	41
Communications Manager	$9,915 - $12,653	41
Building Official	$10,402 - $13,286	42
Economic Development Manager	$10,402 - $13,286	42
Information Technology Manager	$10,402 - $13,286	42
Maintenance Services Manager	$10,402 - $13,286	42
Senior Civil Engineer	$10,402 - $13,286	42
Capital Improvement Program Manager	$11,476 - $14,647	44
Finance Manager	$11,476 - $14,647	44
Human Resources Manager	$11,476 - $14,647	44
Planning Manager	$11,476 - $14,647	44
Traffic Engineer	$11,476 - $14,647	44
Deputy Director of Economic & Community Development	$12,052 - $15,378	45
Deputy Director of Finance	$12,052 - $15,378	45
Deputy Director of Parks & Recreation	$12,052 - $15,378	45
Assistant City Attorney	$13,286 - $16,955	47
City Engineer	$13,286 - $16,955	47
Deputy Director of Public Works	$13,286 - $16,955	47
Deputy City Manager	$13,948 - $17,805	48
Director of Economic & Community Development	$13,948 - $17,805	48
Director of Finance	$13,948 - $17,805	48
Director of Neighborhood Services	$13,948 - $17,805	48
Director of Operations	$13,948 - $17,805	48
Director of Parks & Recreation	$13,948 - $17,805	48
Director of Public Safety	$13,948 - $17,805	48
Director of Public Works	$16,955 - $21,641	52
Assistant City Manager	$19,630 - $25,052	55

TITLE	Monthly - Contract
City Manager	$25,728.54

City of Palmdale
Hourly Wage Range/Step Schedule - General Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	17.00	17.74	18.61	19.17
15	15.50	17.00	17.74	18.61	19.55	20.52
16	17.00	17.74	18.61	19.55	20.52	21.56
17	17.74	18.61	19.55	20.52	21.56	22.63
18	18.61	19.55	20.52	21.56	22.63	23.76
19	19.55	20.52	21.56	22.63	23.76	24.95
20	20.52	21.56	22.63	23.76	24.95	26.19
21	21.56	22.63	23.76	24.95	26.19	27.51
22	22.63	23.76	24.95	26.19	27.51	28.88
23	23.76	24.95	26.19	27.51	28.88	30.32
24	24.95	26.19	27.51	28.88	30.32	31.85
25	26.19	27.51	28.88	30.32	31.85	33.44
26	27.51	28.88	30.32	31.85	33.44	35.11
27	28.88	30.32	31.85	33.44	35.11	36.86
28	30.32	31.85	33.44	35.11	36.86	38.72
29	31.85	33.44	35.11	36.86	38.72	40.64
30	33.44	35.11	36.86	38.72	40.64	42.68
31	35.11	36.86	38.72	40.64	42.68	44.82
32	36.86	38.72	40.64	42.68	44.82	47.05
33	38.72	40.64	42.68	44.82	47.05	49.41
34	40.64	42.68	44.82	47.05	49.41	51.88
35	42.68	44.82	47.05	49.41	51.88	54.48
36	44.82	47.05	49.41	51.88	54.48	57.20
37	47.05	49.41	51.88	54.48	57.20	60.01
38	49.41	51.88	54.48	57.20	60.01	63.06
39	51.88	54.48	57.20	60.01	63.06	66.21
40	54.48	57.20	60.01	63.06	66.21	69.53
41	57.20	60.01	63.06	66.21	69.53	73.00
42	60.01	63.06	66.21	69.53	73.00	76.65
43	63.06	66.21	69.53	73.00	76.65	80.47
44	66.21	69.53	73.00	76.65	80.47	84.50
45	69.53	73.00	76.65	80.47	84.50	88.72
46	73.00	76.65	80.47	84.50	88.72	93.16
47	76.65	80.47	84.50	88.72	93.16	97.82
48	80.47	84.50	88.72	93.16	97.82	102.72
49	84.50	88.72	93.16	97.82	102.72	107.84
50	88.72	93.16	97.82	102.72	107.84	113.25
51	93.16	97.82	102.72	107.84	113.25	118.91
52	97.82	102.72	107.84	113.25	118.91	124.85
53	102.72	107.85	113.25	118.91	124.85	131.09
54	107.85	113.25	118.91	124.85	131.09	137.65
55	113.25	118.91	124.85	131.09	137.65	144.53
56	118.91	124.85	131.09	137.65	144.53	151.75
57	124.85	131.09	137.65	144.53	151.75	159.34
58	131.09	137.65	144.53	151.75	159.34	167.31
59	137.65	144.53	151.75	159.34	167.31	175.68
60	144.53	151.75	159.34	167.31	175.68	184.46
61	151.75	159.34	167.31	175.68	184.46	193.69
62	159.34	167.31	175.68	184.46	193.69	203.36
63	167.31	175.68	184.46	193.69	203.36	213.54

City of Palmdale
Bi-weekly Wage Range/Step Schedule - General Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	1,360.00	1,419.20	1,488.80	1,533.60
15	1,240.00	1,360.00	1,419.20	1,488.80	1,564.00	1,641.60
16	1,360.00	1,419.20	1,488.80	1,564.00	1,641.60	1,724.80
17	1,419.20	1,488.80	1,564.00	1,641.60	1,724.80	1,810.40
18	1,488.80	1,564.00	1,641.60	1,724.80	1,810.40	1,900.80
19	1,564.00	1,641.60	1,724.80	1,810.40	1,900.80	1,996.00
20	1,641.60	1,724.80	1,810.40	1,900.80	1,996.00	2,095.20
21	1,724.80	1,810.40	1,900.80	1,996.00	2,095.20	2,200.80
22	1,810.40	1,900.80	1,996.00	2,095.20	2,200.80	2,310.40
23	1,900.80	1,996.00	2,095.20	2,200.80	2,310.40	2,425.60
24	1,996.00	2,095.20	2,200.80	2,310.40	2,425.60	2,548.00
25	2,095.20	2,200.80	2,310.40	2,425.60	2,548.00	2,675.20
26	2,200.80	2,310.40	2,425.60	2,548.00	2,675.20	2,808.80
27	2,310.40	2,425.60	2,548.00	2,675.20	2,808.80	2,948.80
28	2,425.60	2,548.00	2,675.20	2,808.80	2,948.80	3,097.60
29	2,548.00	2,675.20	2,808.80	2,948.80	3,097.60	3,251.20
30	2,675.20	2,808.80	2,948.80	3,097.60	3,251.20	3,414.40
31	2,808.80	2,948.80	3,097.60	3,251.20	3,414.40	3,585.60
32	2,948.80	3,097.60	3,251.20	3,414.40	3,585.60	3,764.00
33	3,097.60	3,251.20	3,414.40	3,585.60	3,764.00	3,952.80
34	3,251.20	3,414.40	3,585.60	3,764.00	3,952.80	4,150.40
35	3,414.40	3,585.60	3,764.00	3,952.80	4,150.40	4,358.40
36	3,585.60	3,764.00	3,952.80	4,150.40	4,358.40	4,576.00
37	3,764.00	3,952.80	4,150.40	4,358.40	4,576.00	4,800.80
38	3,952.80	4,150.40	4,358.40	4,576.00	4,800.80	5,044.80
39	4,150.40	4,358.40	4,576.00	4,800.80	5,044.80	5,296.80
40	4,358.40	4,576.00	4,800.80	5,044.80	5,296.80	5,562.40
41	4,576.00	4,800.80	5,044.80	5,296.80	5,562.40	5,840.00
42	4,800.80	5,044.80	5,296.80	5,562.40	5,840.00	6,132.00
43	5,044.80	5,296.80	5,562.40	5,840.00	6,132.00	6,437.60
44	5,296.80	5,562.40	5,840.00	6,132.00	6,437.60	6,760.00
45	5,562.40	5,840.00	6,132.00	6,437.60	6,760.00	7,097.60
46	5,840.00	6,132.00	6,437.60	6,760.00	7,097.60	7,452.80
47	6,132.00	6,437.60	6,760.00	7,097.60	7,452.80	7,825.60
48	6,437.60	6,760.00	7,097.60	7,452.80	7,825.60	8,217.60
49	6,760.00	7,097.60	7,452.80	7,825.60	8,217.60	8,627.20
50	7,097.60	7,452.80	7,825.60	8,217.60	8,627.20	9,060.00
51	7,452.80	7,825.60	8,217.60	8,627.20	9,060.00	9,512.80
52	7,825.60	8,217.60	8,627.20	9,060.00	9,512.80	9,988.00
53	8,217.60	8,628.00	9,060.00	9,512.80	9,988.00	10,487.20
54	8,628.00	9,060.00	9,512.80	9,988.00	10,487.20	11,012.00
55	9,060.00	9,512.80	9,988.00	10,487.20	11,012.00	11,562.40
56	9,512.80	9,988.00	10,487.20	11,012.00	11,562.40	12,140.00
57	9,988.00	10,487.20	11,012.00	11,562.40	12,140.00	12,747.20
58	10,487.20	11,012.00	11,562.40	12,140.00	12,747.20	13,384.80
59	11,012.00	11,562.40	12,140.00	12,747.20	13,384.80	14,054.40
60	11,562.40	12,140.00	12,747.20	13,384.80	14,054.40	14,756.80
61	12,140.00	12,747.20	13,384.80	14,054.40	14,756.80	15,495.20
62	12,747.20	13,384.80	14,054.40	14,756.80	15,495.20	16,268.80
63	13,384.80	14,054.40	14,756.80	15,495.20	16,268.80	17,083.20

City of Palmdale
Monthly Wage Range/Step Schedule - General Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	2,947	3,075	3,226	3,323
15	N/A	2,947	3,075	3,226	3,389	3,557
16	2,947	3,075	3,226	3,389	3,557	3,737
17	3,075	3,226	3,389	3,557	3,737	3,923
18	3,226	3,389	3,557	3,737	3,923	4,118
19	3,389	3,557	3,737	3,923	4,118	4,325
20	3,557	3,737	3,923	4,118	4,325	4,540
21	3,737	3,923	4,118	4,325	4,540	4,768
22	3,923	4,118	4,325	4,540	4,768	5,006
23	4,118	4,325	4,540	4,768	5,006	5,255
24	4,325	4,540	4,768	5,006	5,255	5,521
25	4,540	4,768	5,006	5,255	5,521	5,796
26	4,768	5,006	5,255	5,521	5,796	6,086
27	5,006	5,255	5,521	5,796	6,086	6,389
28	5,255	5,521	5,796	6,086	6,389	6,711
29	5,521	5,796	6,086	6,389	6,711	7,044
30	5,796	6,086	6,389	6,711	7,044	7,398
31	6,086	6,389	6,711	7,044	7,398	7,769
32	6,389	6,711	7,044	7,398	7,769	8,155
33	6,711	7,044	7,398	7,769	8,155	8,564
34	7,044	7,398	7,769	8,155	8,564	8,993
35	7,398	7,769	8,155	8,564	8,993	9,443
36	7,769	8,155	8,564	8,993	9,443	9,915
37	8,155	8,564	8,993	9,443	9,915	10,402
38	8,564	8,993	9,443	9,915	10,402	10,930
39	8,993	9,443	9,915	10,402	10,930	11,476
40	9,443	9,915	10,402	10,930	11,476	12,052
41	9,915	10,402	10,930	11,476	12,052	12,653
42	10,402	10,930	11,476	12,052	12,653	13,286
43	10,930	11,476	12,052	12,653	13,286	13,948
44	11,476	12,052	12,653	13,286	13,948	14,647
45	12,052	12,653	13,286	13,948	14,647	15,378
46	12,653	13,286	13,948	14,647	15,378	16,148
47	13,286	13,948	14,647	15,378	16,148	16,955
48	13,948	14,647	15,378	16,148	16,955	17,805
49	14,647	15,378	16,148	16,955	17,805	18,692
50	15,378	16,148	16,955	17,805	18,692	19,630
51	16,148	16,955	17,805	18,692	19,630	20,611
52	16,955	17,805	18,692	19,630	20,611	21,641
53	17,805	18,694	19,630	20,611	21,641	22,722
54	18,694	19,630	20,611	21,641	22,722	23,859
55	19,630	20,611	21,641	22,722	23,859	25,052
56	20,611	21,641	22,722	23,859	25,052	26,303
57	21,641	22,722	23,859	25,052	26,303	27,619
58	22,722	23,859	25,052	26,303	27,619	29,000
59	23,859	25,052	26,303	27,619	29,000	30,451
60	25,052	26,303	27,619	29,000	30,451	31,973
61	26,303	27,619	29,000	30,451	31,973	33,573
62	27,619	29,000	30,451	31,973	33,573	35,249
63	29,000	30,451	31,973	33,573	35,249	37,014

City of Palmdale
Yearly Wage Range/Step Schedule - General Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	35,360	36,899	38,709	39,874
15	N/A	35,360	36,899	38,709	40,664	42,682
16	35,360	36,899	38,709	40,664	42,682	44,845
17	36,899	38,709	40,664	42,682	44,845	47,070
18	38,709	40,664	42,682	44,845	47,070	49,421
19	40,664	42,682	44,845	47,070	49,421	51,896
20	42,682	44,845	47,070	49,421	51,896	54,475
21	44,845	47,070	49,421	51,896	54,475	57,221
22	47,070	49,421	51,896	54,475	57,221	60,070
23	49,421	51,896	54,475	57,221	60,070	63,066
24	51,896	54,475	57,221	60,070	63,066	66,248
25	54,475	57,221	60,070	63,066	66,248	69,555
26	57,221	60,070	63,066	66,248	69,555	73,029
27	60,070	63,066	66,248	69,555	73,029	76,669
28	63,066	66,248	69,555	73,029	76,669	80,538
29	66,248	69,555	73,029	76,669	80,538	84,531
30	69,555	73,029	76,669	80,538	84,531	88,774
31	73,029	76,669	80,538	84,531	88,774	93,226
32	76,669	80,538	84,531	88,774	93,226	97,864
33	80,538	84,531	88,774	93,226	97,864	102,773
34	84,531	88,774	93,226	97,864	102,773	107,910
35	88,774	93,226	97,864	102,773	107,910	113,318
36	93,226	97,864	102,773	107,910	113,318	118,976
37	97,864	102,773	107,910	113,318	118,976	124,821
38	102,773	107,910	113,318	118,976	124,821	131,165
39	107,910	113,318	118,976	124,821	131,165	137,717
40	113,318	118,976	124,821	131,165	137,717	144,622
41	118,976	124,821	131,165	137,717	144,622	151,840
42	124,821	131,165	137,717	144,622	151,840	159,432
43	131,165	137,717	144,622	151,840	159,432	167,378
44	137,717	144,622	151,840	159,432	167,378	175,760
45	144,622	151,840	159,432	167,378	175,760	184,538
46	151,840	159,432	167,378	175,760	184,538	193,773
47	159,432	167,378	175,760	184,538	193,773	203,466
48	167,378	175,760	184,538	193,773	203,466	213,658
49	175,760	184,538	193,773	203,466	213,658	224,307
50	184,538	193,773	203,466	213,658	224,307	235,560
51	193,773	203,466	213,658	224,307	235,560	247,333
52	203,466	213,658	224,307	235,560	247,333	259,688
53	213,658	224,328	235,560	247,333	259,688	272,667
54	224,328	235,560	247,333	259,688	272,667	286,312
55	235,560	247,333	259,688	272,667	286,312	300,622
56	247,333	259,688	272,667	286,312	300,622	315,640
57	259,688	272,667	286,312	300,622	315,640	331,427
58	272,667	286,312	300,622	315,640	331,427	348,005
59	286,312	300,622	315,640	331,427	348,005	365,414
60	300,622	315,640	331,427	348,005	365,414	383,677
61	315,640	331,427	348,005	365,414	383,677	402,875
62	331,427	348,005	365,414	383,677	402,875	422,989
63	348,005	365,414	383,677	402,875	422,989	444,163

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-076

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE AMENDING THE CITY'S CLASSIFICATION AND PAY PLAN FOR BARGAINING UNIT POSITIONS

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The City's Classification and Pay Plan for Bargaining Unit Positions is amended as set forth in the attached Exhibit #1 and Exhibit #2.

SECTION 2. The City Clerk shall certify the passage and adoption of this resolution Amending the City's Classification and Pay Plan for Bargaining Unit Positions. It is deemed to be effective November 15, 2023.

SECTION 3. The City Clerk shall certify to the adoption of this resolution.

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PASSED, APPROVED and **ADOPTED** this 15th day of November, 2023.

_____
Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

_____
William P. Curley, III
City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES:_____

ABSTAIN:_____ABSENT:_____

Date: _____ _____
Rochelle Scott, Acting City Clerk

Revised November 15, 2023

CLASSIFICATION AND PAY PLAN – BARGAINING UNIT POSITIONS
FY 2023-2024

TITLE	RANGE Hourly	RANGE #
Maintenance Helper	$17.20 - $19.93 per hour	14

TITLE	RANGE Monthly	RANGE #
Custodian I	$3,997 - $5,103	22
Maintenance Worker I	$3,997 - $5,103	22
Collection System Operator I	$4,406 - $5,625	24
Custodian II	$4,406 - $5,625	24
Maintenance Worker II	$4,406 - $5,625	24
Collection System Operator II	$4,859 - $6,202	26
Equipment Operator	$5,625 - $7,179	29
Landscape Inspector	$5,625 - $7,179	29
Lead Custodian	$5,625 - $7,179	29
Maintenance Leadworker	$5,625 - $7,179	29
Maintenance Specialist	$5,625 - $7,179	29
Senior Collection System Operator	$5,625 - $7,179	29
Heavy Equipment Operator	$6,202 - $7,916	31
Senior Maintenance Specialist	$6,202 - $7,916	31
Traffic Signal & Streetlight Technician I	$6,202 - $7,916	31
Traffic Signal & Streetlight Technician II	$6,711 - $8,564	33
Senior Traffic Signal & Streetlight Technician	$7,398 - $9,443	35

Revised November 15, 2023

City of Palmdale
Hourly Wage Range/Step Schedule - Bargaining Unit Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	17.20	18.06	18.98	19.93
22	23.06	24.22	25.42	26.70	28.03	29.44
24	25.42	26.70	28.03	29.44	30.90	32.45
26	28.03	29.44	30.90	32.45	34.08	35.78
29	32.45	34.08	35.78	37.57	39.45	41.42
31	35.78	37.57	39.45	41.42	43.50	45.67
33	38.72	40.64	42.68	44.82	47.05	49.41
35	42.68	44.82	47.05	49.41	51.88	54.48

Revised November 15, 2023

City of Palmdale
Bi-Weekly Range/Step Schedule - Bargaining Unit Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	1,376.00	1,444.80	1,518.40	1,594.40
22	1,844.80	1,937.60	2,033.60	2,136.00	2,242.40	2,355.20
24	2,033.60	2,136.00	2,242.40	2,355.20	2,472.00	2,596.00
26	2,242.40	2,355.20	2,472.00	2,596.00	2,726.40	2,862.40
29	2,596.00	2,726.40	2,862.40	3,005.60	3,156.00	3,313.60
31	2,862.40	3,005.60	3,156.00	3,313.60	3,480.00	3,653.60
33	3,097.60	3,251.20	3,414.40	3,585.60	3,764.00	3,952.80
35	3,414.40	3,585.60	3,764.00	3,952.80	4,150.40	4,358.40

Revised November 15, 2023

City of Palmdale
Monthly Wage Range/Step Schedule - Bargaining Unit Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	2,981	3,130	3,290	3,455
22	3,997	4,198	4,406	4,628	4,859	5,103
24	4,406	4,628	4,859	5,103	5,356	5,625
26	4,859	5,103	5,356	5,625	5,907	6,202
29	5,625	5,907	6,202	6,512	6,838	7,179
31	6,202	6,512	6,838	7,179	7,540	7,916
33	6,711	7,044	7,398	7,769	8,155	8,564
35	7,398	7,769	8,155	8,564	8,993	9,443

Revised November 15, 2023

City of Palmdale
Yearly Wage Range/Step Schedule - Bargaining Unit Positions
Effective July 3, 2023

Range	Step A	Step B	Step C	Step D	Step E	Step F
14	N/A	N/A	35,776	37,565	39,478	41,454
22	47,965	50,378	52,874	55,536	58,302	61,235
24	52,874	55,536	58,302	61,235	64,272	67,496
26	58,302	61,235	64,272	67,496	70,886	74,422
29	67,496	70,886	74,422	78,146	82,056	86,154
31	74,422	78,146	82,056	86,154	90,480	94,994
33	80,538	84,531	88,774	93,226	97,864	102,773
35	88,774	93,226	97,864	102,773	107,910	113,318

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE ESTABLISHING DIRECTORS / EXECUTIVE EMPLOYEES' COMPENSATION, BENEFITS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT

WHEREAS, the City of Palmdale currently employs its Directors and Executive management staff by individual Employment Agreements; and

WHEREAS, the City of Palmdale desires to consolidate and terminate all of the existing Employment Agreements and establish the terms and conditions of employment by a unified Compensation Program Resolution that would continue the existing terms and conditions of the individual Employment Agreements and would thereafter establish the compensation programs for all future Directors and Executive Employees; and

WHEREAS, the City Manager has determined that more effective oversight, fairness, and consistency of administration of the Directors/Executive Management staff will be accomplished through the adoption of a unified Compensation Program Resolution and, therefore has recommended that the City Council adopt this Resolution memorializing the compensation, benefits, and other terms and conditions of employment for all Directors/Executive Management employees.

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. City Manager Authority. In accordance with the City of Palmdale Municipal Code § 2.04(B)(C) and(D), the City Manager is the administrative head of the City government and responsible for the efficient administration of all City affairs including, without limitation, directing department heads, transfer employees from one department to another, consolidate or combine offices, position, departments or units, appoint, remove, exercise control over and supervise departments and City employees, with the exception of the City Attorney and the City Treasurer.

SECTION 2. Pay Increase. The City Manager has the discretion to authorize pay increases within the approved steps of the Classification and Pay Plan.

SECTION 3. Classifications Covered. The following Director/Executive Management classifications shall be covered under the provisions of this Resolution:

- Assistant City Manager
- Deputy City Manager
- Director of Operations

- Director of Economic & Community Development
- Director of Finance
- Director of Neighborhood Services
- Director of Parks & Recreations
- Director of Public Safety
- Director of Public Works

All Employment Agreements held by incumbent employees in the above-listed classifications shall terminate effective midnight on November 19, 2023. Effective 12:01 am on November 20, 2023 all incumbent employees in the above listed positions shall be employed by the City in accordance with the terms and conditions provided herein.

SECTION 4. Salary Schedule. All classifications covered by this Resolution shall be paid in accordance with the City's "Classification and Pay Plan" as may be adopted and modified from time to time by the City Council. The Pay Plan for FY 2023-24 is attached to this Resolution and is incorporated herein.

SECTION 5. CalPERS Retirement. The City is a member of the California Employees' Retirement System (CalPERS). All full-time employees are enrolled in either a New Member or a Classic plan as determined by CalPERS. New Members shall be enrolled in the 2% @ 62 formula and shall contribute the full 6.75% employee contribution. Classic CalPERS members are enrolled in one of the following: 1) 2% @ 60 formula and are responsible for paying an employee contribution of 7%; and, 2) 2.7% @ 55 formula and are responsible for paying an employee contribution of 8%.

SECTION 6. Employment Status. All employees covered by this Resolution shall serve at the pleasure of the City Manager and may be terminated at any time, with or without cause, and without any right to pre or post-termination hearing. In the event an employee is terminated without cause, the City shall pay to the employee severance in an amount not to exceed six (6) month's salary, less applicable deductions. As a condition to receiving severance under this Section, the employee would be required to execute a severance and release agreement wherein the employee would agree to resign and release any and all claims, including civil and administrative claims, in exchange for the severance pay. Employees terminated for cause or who voluntarily resign from their positions are not entitled to severance benefits. Upon termination from employment either with or without cause, the employee shall be paid for accrued but unused vacation but not for accrued sick leave in accordance with state law or the City's Human Resources Rules & Regulations.

SECTION 7. Deferred Compensation. All employees covered under this Resolution shall be eligible to enroll in the City's Deferred Compensation 457(b) Plan ("Plan"). The

terms and conditions of participation in the Plan are subject to the City Council's modification of such Plan as required under applicable federal and California law. The City shall annually contribute five thousand dollars ($5,000) to participating employees, such amount to be equally contributed per pay period to each pay period established by the City.

SECTION 8. Auto Allowance. The following classifications shall be eligible for an auto allowance: 1) Deputy City Manager -- $ 200/month; 2) Director -- $ 200/month; 3) Assistant City Manager -- $ 400/month.

SECTION 9. UCLA Physical. All employees covered by this Resolution shall be entitled to one executive physical every other fiscal year at the UCLA medical facilities.

SECTION 10. Cost of Living Adjustments (COLA). The City Council may, from time to time, adopt by Resolution COLA adjustments and/or adjustments to the Classification and Pay Plan for those employees covered under this Resolution. Employees covered by this Resolution shall receive a COLA when the City Council approves a COLA for General Employees.

SECTION 11. Accrued Leave. Employees covered under this Resolution shall accrue the following leaves:

a. **Vacation**: Employees shall accrue vacation leave at the rate of 6.15 hours per pay period (160 hours annually), such pay periods as established by the City Council.
b. **Sick Leave:** Employees shall accrue sick leave at the rate of 3.7 hours per pay period (96 hours annually), such pay periods as established by the City Council.
c. **Administrative Leave:** Employees shall accrue administrative leave at the rate of 3.7 hours per pay period (96 hours annually), such pay period as established by the City Council.

SECTION 12. Medical, Dental, and Vision Insurance. All classifications covered by this Resolution shall continue to receive the same Medical, Dental and Vision Insurance as General Employees and may be modified from time to time.

SECTION 13. Long Term Disability Insurance. The City will continue to contribute one hundred percent (100%) of the premium for Long Term Disability Insurance, the same as General Employees, and may be modified from time to time.

SECTION 14. Life Insurance. The City will continue to contribute one hundred percent (100%) of the premium for a term life policy of $50,000, the same as General Employees, and may be modified from time to time.

SECTION 15. Professional Development. The City agrees to budget and pay for professional dues, subscriptions, trainings, and other associated costs, such as travel, room and board, on behalf of the Employee which are reasonably necessary for professional growth as solely determined by the City Manager.

SECTION 16. Technology/Cell Phone Allowance. The City shall provide Employee with a City cell phone for the conduct of City business only, paid for by the City. In the alternative, Employee may elect to receive a cell phone allowance in accordance with the City's Administrative Policy A-4.

SECTION 17. Existing Employment Agreements. The City Council shall continue to recognize and comply with the terms of the Employment Agreements of the City Manager and the current City Attorney. With respect to the current Assistant City Manager position, the City will recognize the Employment Agreement of the incumbent; however, in the event that the Assistant City Manager position becomes vacant, any new incumbent shall be covered under the terms and conditions of this Resolution. The City Manager and the City Attorney positions are not covered under the provisions of this Resolution and may separately enter into Employment Agreements with the City Council.

SECTION 18. The effective date of this resolution shall be November 15th, 2023.

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SECTION 19. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED and **ADOPTED** this 15th day of November, 2023.

_____
Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

_____
William P. Curley, III
City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES:_____

ABSTAIN:_____ABSENT:_____

Date: _____ _____
Rochelle Scott, Acting City Clerk

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT**
ECONOMIC DEVELOPMENT DIVISION

DISTRICT: **ALL**

SUBJECT: **ADOPT RESOLUTION NO. CC 2023-067, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING THE PALMDALE AEROSPACE INCENTIVE PROGRAM**

ISSUE

Adopt Resolution No. CC 2023-067, a Resolution of the City Council of the City of Palmdale approving the Palmdale Aerospace Incentive Program.

RECOMMENDATION

Staff recommends that the City Council:

1. Adopt Resolution No. CC 2023-067, a Resolution of the City Council of the City of Palmdale approving the Palmdale Aerospace Incentive Program; and

2. Authorize the City Manager, or her designee, to take actions necessary to implement the program, including the execution of reimbursement agreements with qualified recipients.

BACKGROUND

The aerospace and defense industries have a profound impact on the local economy. These sectors provide highly skilled jobs and significantly contribute to regional and local development. The City continually seeks ways to support these innovative industries and attract businesses that are eager to expand their presence within the Palmdale market. Notably, many businesses in the Los Angeles basin face limitations in their opportunities to grow, making Palmdale an attractive alternative. Beyond providing essential support services to Air Force Plant 42, attracting new aerospace related businesses to Palmdale will bolster the local community by providing well-compensated, skilled employment opportunities closer to home.

DISCUSSION

The Palmdale Aerospace Incentive Program (PAIP) aims to accelerate the attraction of new businesses and foster the growth of the local aerospace ecosystem. This strategic initiative is supported by three primary objectives: attracting small to mid-size aerospace and defense-related businesses, promoting the creation of high-quality jobs and capital

investment, and attracting projects that significantly enhance employment opportunities and investments within the City. To qualify for the PAIP, businesses must create a minimum of 50 full-time jobs, be a small to mid-size business engaged in the manufacturing of military and aerospace equipment or military weaponry and meet annual revenue standards aligned with the Small Business Administration Small Business Size Standards. The incentive amount that a business can qualify for is based on the number of full-time jobs created and the size of the building that will be utilized by the business. The City will allocate $250,000 to fund the first year of the PAIP.

The PAIP represents a significant step toward the City's objectives of fostering quality job creation, economic attraction and local expansion, and the advancement of manufacturing in the aerospace and defense sectors. Palmdale has nearly 13 million square feet of industrial space in the development pipeline, and this program will play a crucial role in engaging potential end users with these opportunities. To promote the program, the City will utilize existing real estate broker and developer networks. The City will also utilize paid and organic marketing opportunities to help promote the program. This includes advertising in aerospace related publications, targeted marketing campaigns, partnerships with aerospace and business associations, and hosting targeted meetings and events to connect the City with decision makers.

FISCAL IMPACT

$250,000; funds for the PAIP is allocated within the Measure AV budget for FY 2023-24.

STRATEGIC PLAN

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community.

Prepared by:	Mica Schuler, Senior Management Analyst
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

1. Resolution CC 2023-067
2. Application

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-067

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING THE PALMDALE AEROSPACE INCENTIVE PROGRAM

WHEREAS, the Palmdale Aerospace Incentive Program (PAIP) is a strategic initiative designed to attract small to mid-size aerospace and defense support businesses that provide goods and services that sustain the operations of the aerospace and defense industry in our region; and

WHEREAS, the PAIP is strategically designed to encourage quality job creation and capital investment in Palmdale; and

WHEREAS, the PAIP is in alignment with the goals of the Palmdale City Council, to foster economic vitality and innovation; and

WHEREAS, the PAIP will incentivize the creation of new primary jobs and investment in the City by providing incrementally larger incentives for projects creating more jobs and capital investment; and

WHEREAS, the PAIP eligibility criteria is comprehensive and the evaluation and calculation of incentive amounts will ensure that the program attracts businesses poised to significantly contribute to Palmdale's economic and industrial development; and

WHEREAS, in an effort to demonstrate the City's commitment to job creation and advancement of the aerospace and defense industry, the City Council of the City of Palmdale has decided to enact this Resolution.

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby specifically finds that all of the facts set forth in the Recitals of this Resolution, are true and correct.

SECTION 2. The City's PAIP shall be instituted to facilitate quality job creation and capital investment in Palmdale by attracting small to mid-size aerospace and defense support businesses that provide product and services that sustain the operations of the aerospace and defense industry.

SECTION 3. The PAIP eligibility criteria requires that a business demonstrate that a minimum of 50 new primary jobs will be created and the business plays a vital role in the aerospace and defense supply chain. Eligibility criteria for business size is aligned with the Small Business Administration Small Business Size Standards, which include businesses with annual revenue of $47 million or less. Qualified support businesses encompass those producing specialized parts for aircraft, spacecraft, missiles, and defense systems.

SECTION 4. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED and **ADOPTED** this 15th day of November 2023.

_____
Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

_____
William P. Curley III, City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November 2023 by the following roll call vote:

AYES: _____

NOES:_____

ABSTAIN:_____ABSENT:_____

Date: _____ _____

Rochelle Scott, Acting City Clerk

Attachment 2

Palmdale Aerospace Incentive Program Application

Introduction and Program Guidelines

The City of Palmdale Aerospace Incentive Program (PAIP) is a structured initiative aimed at attracting aerospace and defense-related businesses to the area. The goals of the PAIP are to:

- Attract aerospace and defense supportive businesses that provide products and services to support the operations and manufacturing processes of aerospace and defense companies.
- Incentivize job creation and capital investment in the city.
- Provide larger incentives for projects with more jobs and capital investment in Palmdale.

Eligibility Requirement:

- A minimum of 50 new primary jobs must be created.
- A minimum of 70,000 square feet of new construction or new lease space will be utilized.
- End users of the company's product must be in the aerospace or defense industry or play a crucial role in the supply chain of the aerospace and defense sectors, helping them produce advanced technologies and systems for military and civilian purposes. They must provide products or services to support the operations and manufacturing process of aerospace and defense companies as outlined in the qualifying companies' section of this program.
- Businesses annual revenue must be $47 million or less as designated by the North American Industry Classification System (NAICS) utilized by the US Small Business Administration to qualify as a small business for businesses involved in the manufacturing of military and aerospace equipment or military weapons.
- A minimum of three consecutive years of first-class business operation in a field of business as set forth in the qualifying companies section outlined in this program is required.
- If the building to be occupied by the qualifying company is owned by another party, a lease agreement with a minimum 5-year commitment is necessary.

Incentive Structure:

- Total Incentive = (Total Square Feet x .75 Incentive Rate per SF) + (Total Jobs Created x 1,300 Incentive Rate per Job)
- The maximum incentive capped at $250,000 per project or until funds are exhausted.

Qualifying companies must be in one of the following categories:

- Component Manufacturers: These companies produce specific parts and components used in aircraft, spacecraft, missiles, and defense systems. Examples include engine manufacturers, avionics suppliers, and companies that produce structural components like wings or fuselage sections.
- Materials Suppliers: These suppliers provide the materials needed for manufacturing aerospace and defense products. This includes specialized metals, composites, ceramics, and other advanced materials that meet strict aerospace and defense industry standards for strength, durability, and weight.
- Electronics and Avionics Suppliers: This category includes companies that supply electronic components, avionics systems, navigation equipment, and communication systems for aircraft, satellites, and defense applications.
- Software and IT Services Providers: These suppliers develop and provide software solutions for aircraft and defense systems. This can include flight control software, simulation software, cybersecurity services, and more.

- Maintenance, Repair, and Overhaul (MRO) Providers: MRO companies offer services to maintain, repair, and overhaul aerospace and defense equipment. This includes routine maintenance, inspections, and the refurbishment of military vehicles, aircraft, and naval vessels.
- Logistics and Supply Chain Management: Suppliers in this category provide logistics and supply chain management services, ensuring that the necessary parts and equipment are delivered on time and efficiently to support aerospace and defense manufacturing and operations.
- Testing and Certification Services: These companies offer testing, validation, and certification services to ensure that aerospace and defense products meet safety and quality standards. They conduct various tests, including stress testing, environmental testing, and electromagnetic interference testing.
- Research and Development (R&D) Firms: R&D companies work on cutting-edge technologies and innovations in the aerospace and defense sectors. They may collaborate with government agencies and defense contractors to develop new technologies and systems.
- Consulting and Professional Services: These suppliers offer consulting, engineering, and other professional services to help aerospace and defense companies with design, development, regulatory compliance, and project management.
- Raw Material Suppliers: Companies that provide basic raw materials, such as metals, plastics, and chemicals, which are used in the manufacturing processes of aerospace and defense products.
- Tool and Equipment Suppliers: These suppliers provide specialized tools, machinery, and equipment needed for the manufacturing and maintenance of aerospace and defense products.

Application/Evaluation Process

A completed application must be submitted. Staff will evaluate and calculate the incentive amount based on the incentive structure. If approved, a signed incentive reimbursement agreement will be required agreeing to policies of the program and the City of Palmdale. Approved incentive funds will be distributed by check upon proof that the business has received an approved Building Permit from the City of Palmdale.

The information requested on this application is needed by the City of Palmdale to determine eligibility for the Palmdale Aerospace Incentive Program. If you have any questions concerning the information being requested on this application, please contact Economic Development. Please complete the information requested and submit it to:

Email: EconDev@cityofpalmdale.org

Mail: City of Palmdale
Economic Development
38250 Sierra Highway
Palmdale, CA 93550
Phone: 661-267-5125

Eligibility Checklist

The checklist below assists businesses to determine eligibility for the PAIP.

Will this business be located within Palmdale City boundary?	Yes ___ No ___
Does this business meet the criteria outlined for qualified businesses?	Yes ___ No ___
Will this business create a minimum of 50 new primary jobs?	Yes ___ No ___

Will this business utilize a minimum of 70,000 square feet in either new construction or new lease space?	Yes ___ No ___
Does this business have a minimum of three years in business providing services as a qualified business?	Yes ___ No ___
Is this business plan to remain in Palmdale for at least 5 years?	Yes ___ No ___

If you answered yes to all questions in the eligibility checklist, you may be eligible for the PAIP. Proceed to complete application. If you answered no to any question, you may not be eligible for the PAIP.

Summary Application

Legal Name of Business:	
DBA (if applicable):	
Business Address:	
Point of Contact:	
Contact Email:	
Contact Phone:	
Date Business Opened:	
Federal EIN:	
Qualifying Business Category:	
Number of Jobs to be Created:	
New construction or Lease:	
If New Construction, Expected Date of Completion:	
If Lease, Provide Lease Term:	
Square Footage of Facility:	

Application Signature Page

(complete one signature page for each business owner)

The applicant warrants and represents that no City Council Member, City Staff Member, Commission Member, Committee Member, and/or any person who is subject to the provisions of the City's Conflict of Interest Code, has any ownership interest of any kind or amount in the business for which the grant would be issued, or would otherwise receive a financial benefit from any grant which may be extended to applicant and/or for the business. By accepting this grant, I agree to comply with the current and future guidelines and other requirements as set forth by the City of Palmdale.

Name (Print) _____ Date _____

Signature _____

I attest that I have read and understood the application and completed the application in full, including the required attachments listed below. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Required Attachments (all applicants)

1. Comprehensive business proposal detailing the type of business, operational methods, facility size, and the number of jobs to be created, among other relevant information.
2. Approved Site Plans for new construction or copy of LOI or lease agreement.

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC WORKS DEPARTMENT**
ENGINEERING DIVISION

DISTRICT: **5**

SUBJECT: **NOTICE OF COMPLETION – ACCEPT PUBLIC IMPROVEMENTS FOR CIRCLE K AT 3851 EAST PALMDALE BLVD**

ISSUE

Notice of Completion – Accept Public Improvements for Circle K at 3851 East Palmdale Blvd.

RECOMMENDATION

Staff recommends that the City Council:

1. Accept the completed public improvements for Circle K at 3851 East Palmdale Blvd.; and,

2. Authorize the City Manager, or her designee, to file a Notice of Completion and release the security for the completed public improvements.

BACKGROUND

This project constructed street improvements, including curb, gutter, sidewalk, streetlights, and pavement on Palmdale Blvd. and 40th St. East. The public improvements have been installed per the approved construction plan, inspected, and approved by City Public Works inspection staff.

DISCUSSION

The required public improvements for the project listed in Exhibit “A” and shown in Exhibit “B” have been completed to the satisfaction of the City Engineer as required in the Subdivision/Development Improvement Agreement between the developer and the City. This Council action will accept the public improvements as complete. After the developer fulfills a one-year maintenance period, the improvements will be transferred to the City for maintenance. This Council action will also initiate the City’s release of applicable securities posted per the City’s subdivision regulations. This action is being taken according to Section 16.110.060 of the City’s Municipal Code.

FISCAL IMPACT

The City's maintenance costs will incrementally increase due to acceptance of these improvements. The developer is required to fulfill a one-year maintenance period prior to transferring responsibilities to the City. Ongoing maintenance costs will be allocated through the annual budget process for future years.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

Prepared by:	Lynn Glidden, Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

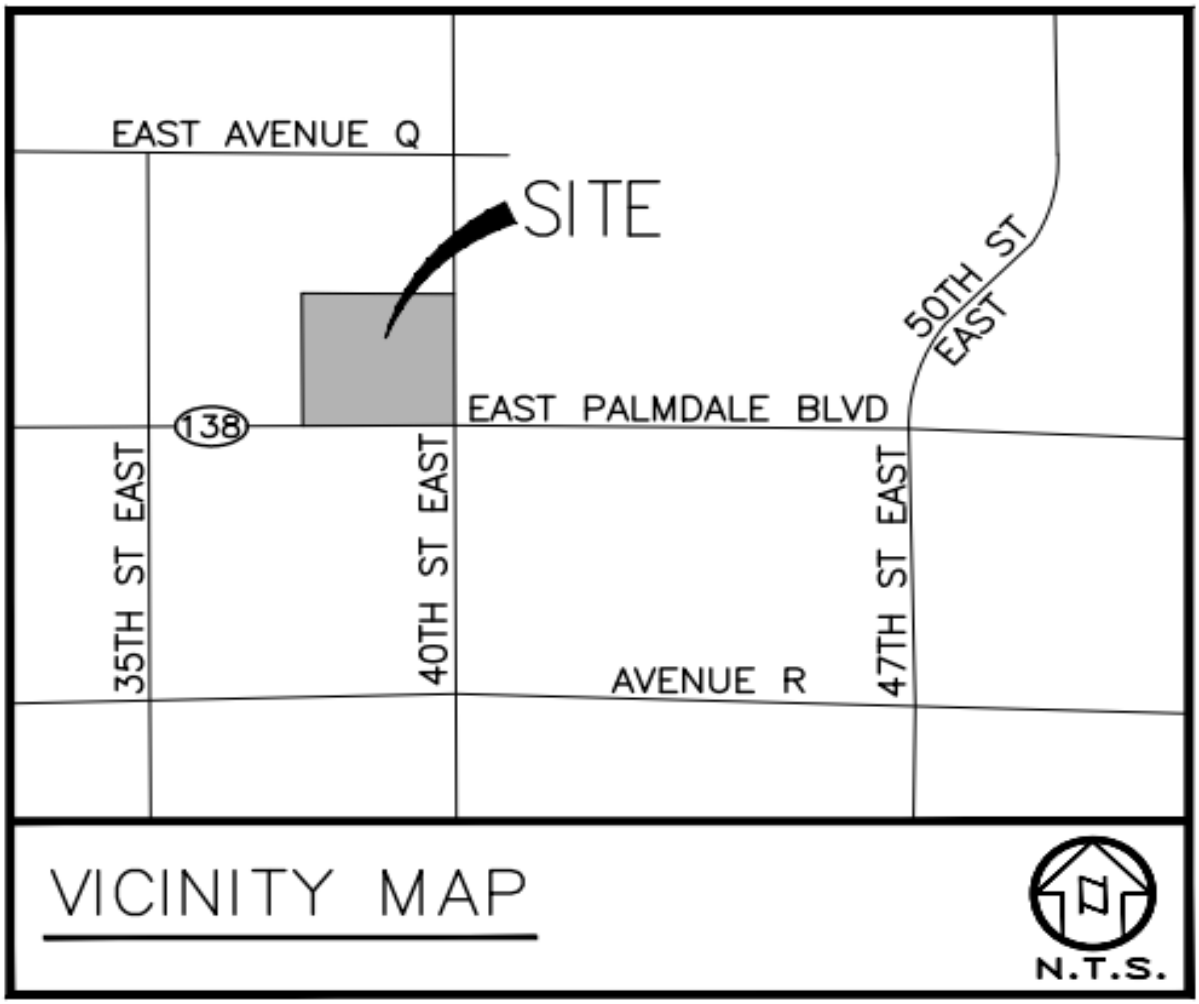
ATTACHMENTS

1. Exhibit A – List of Completed Public Improvements
2. Exhibit B – Site Map Location
3. Notice of Completion – Circle K Street Improvements

EXHIBIT A
LIST OF COMPLETED PUBLIC IMPROVEMENTS

Tract/Project	Plan #	Quantity	Security
Circle K	ST 17-02	891 LF	$263,500

EXHIBIT B
SITE MAP



RECORDING REQUESTED BY:

CITY OF PALMDALE

WHEN RECORDED MAIL TO:

CITY OF PALMDALE
OFFICE OF THE CITY CLERK
38300 SIERRA HIGHWAY, SUITE C
PALMDALE, CA 93550

Space above this line is for Recorder's Use

NOTICE OF COMPLETION

Notice pursuant to Civil Code Section 3093, is hereby given that:

1. The undersigned is owner or corporate officer of the interest or estate stated below in the property hereinafter described.
2. The full name of the owner is City of Palmdale, a Municipal Corporation.
3. The full address of the owner is 38300 Sierra Highway, Palmdale, CA 93550.
4. The nature of interest or estate of the owner is: **Street Improvements-Circle K.**
5. A work of improvement on the property hereinafter described was completed on **October 03, 2023**
6. The work done was: "**Street Improvements-Circle K**",
7. The name of the Contractor for such work of improvement: **Circle K Stores, Inc.**
8. The property on which said work of improvement was completed is in the City of Palmdale, County of Los Angeles, State of California, and is described as follows: **North of Palmdale Blvd. and 40th Street East.**
9. The address of said property is: **3851 East Palmdale Blvd.**

Dated: **November 15, 2023**

CITY OF PALMDALE

Guillermo I. Padilla, City Engineer

VERIFICATION

I, the undersigned, say: I am the City Engineer, the declarant of the foregoing notice of completion; I have read the said notice of completion and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on **November 15, 2023,** in the City of Palmdale, California.

Guillermo I. Padilla, City Engineer

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC WORKS DEPARTMENT**
ENGINEERING DIVISION

DISTRICT: **ALL**

SUBJECT: **APPROVE ONGOING CONTRACTOR SERVICE AGREEMENTS WITH M. BREY ELECTRIC, INC. DBA MBE CONSTRUCTION, HOUALLA ENTERPRISES LTD. DBA METRO BUILDERS & ENGINEERS GROUP, LTD., AND NASH CONSTRUCTION SERVICES INC. FOR $200,000 EACH FOR TWO YEARS**

ISSUE

Approve ongoing contractor service agreements with M. Brey Electric, Inc. dba MBE Construction, Houalla Enterprises Ltd. dba Metro Builders & Engineers Group, Ltd., and Nash Construction Services, Inc. for $200,000 each for two years.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve ongoing contractor service agreements with M. Brey Electric Inc. dba MBE Construction, Houalla Enterprises Ltd., dba Metro Builders & Engineers Group, Ltd., and Nash Construction Services, Inc., for $200,000 each for two years; and

2. Authorize the City Manager, or her designee, to execute Agreement No. A-8559, Agreement No. A-8560 and Agreement No. A-8561 with M. Brey Electric Inc. dba MBE Construction, Houalla Enterprises Ltd., dba Metro Builders & Engineers Group, Ltd., and Nash Construction Services, Inc., respectively, including non-substantive changes.

BACKGROUND

Due to the increased number of maintenance projects required at the Department of Public Works, it was determined that the City of Palmdale should contract with general contractors to assist with small maintenance projects, including but not limited to the painting of office space, renovation of bathrooms, etc., thus allowing the City maintenance staff to continue providing preventative maintenance services on city facilities. The City solicited Requests for Qualifications (RFQs) for construction-related services through an

open and competitive selection process. The RFQs were publicized on the City's online bid system, Planet Bids, for 30 calendar days.

DISCUSSION

The City released Request for Qualifications No. 23-001-3900 for ongoing general contractor and minor construction services in June 2023. Interested firms were required to submit a statement of qualifications that emphasizes their experience in providing general contractor-related services, including but not limited to framing and rough/finish carpentry, drywall, millwork, glazing, plumbing, electrical, HVAC, painting, etc. The selected firms were to provide all necessary personnel, material, transportation, instrumentation, and equipment necessary to satisfy all appropriate agencies and required to ensure compliance with all applicable federal, state, and local statutes, laws, codes, regulations, policies, procedures, ordinances, standards, specifications, performance standards, and guidelines, applicable to the firm's services and work product.

The contractors were given points in different categories:

- Contractor must have a full-time service office in Southern California for the duration of the contract, including a physical address and applicable business license(s), where key staff are located to ensure availability for meetings at City facilities as requested within a reasonable timeframe during normal business hours.
- Contractor has five or more years of experience performing similar work.
- Contractor must self-perform most of the primary work outlined in the scope of work section included herein with its workforce (versus using subcontractors).
- Contractor has three excellent references for similar work performed in the past five years.
- Contractor shall possess, at a minimum, a valid Class "B" contractor license when the Contractor submits its package.
- Following Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)].
- Following Labor Code Section 1770 et seq., the Project is a "public work." The selected Bidder (Contractor) and any Subcontractors shall pay wages per the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages.

Twenty (20) construction firms were notified, and the City received three qualification packages. All three contractors are qualified firms to work for the City. MBE Construction and Metro Builders are from Beaumont and Newport Beach, respectively, and Nash Construction is a local contractor.

As with other ongoing service agreements, MBE Construction, Metro Builders, and Nash Construction will be paid only for work on a specific scope authorized for projects. These agreements will set a not-to-exceed amount of $200,000 per company. The term of this agreement is two years, with an option for a one-year extension.

FISCAL IMPACT

$600,000; Agreements for each of the three (3) contractors will be for $200,000 per contractor. Funds for projects will be determined on an as-needed basis, and funds will only be spent to the extent that services are utilized. Funds are budgeted and available for FY 2023-24 in Facilities Maintenance contract service accounts.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

A. Seek innovative, cost-effective, customer-focused methods of service delivery.
C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

Prepared by:	Lynn Glidden, Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

1. Agreement No. A-8559
   Agreement No. A-8560
   Agreement No. A-8561

AGREEMENT NO. A-8559
CONTRACT FOR SERVICES
BETWEEN THE CITY OF PALMDALE AND M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION

This CONTRACT for services ("Contract" herein) is made and entered into by and between the City of Palmdale, a public body corporate and politic, (hereinafter called "CITY"), and M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION, a California Corporation, (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 CITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of Public Works Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the City project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to CITY:

On-Going General Contractor and Minor Construction Services.

The scope of services assigned to the CONTRACTOR shall include a range of projects from minor requests to significant construction projects such as remodeling or repair work, at City-owned facilities and that will typically be time sensitive in nature on an as-needed basis. .

CONTRACTOR shall provide a full range of construction, maintenance, and repair services, including but not limited to:
• Framing and Rough Carpentry
• Finish Carpentry
• Drywall
• Millwork
• Glazing
• Ceramic and Mosaic Tile

• Plumbing
• Electrical
• Painting
• Roofing
• Sheet Metal
• HVAC
• Flooring
• Welding
• Asbestos Abatement
• Lead Abatement
• Masonry

CONTRACTORS regular business hours are Monday through Friday 8:00 a.m. to 5:00 p.m. .

All service shall be completed in a workmanlike manner in compliance with all local, state, and federal rules, laws, and regulations, as applicable. CONTRACTOR agrees to remove all debris, trash, and unused materials when leaving the jobsite, leaving it in a broom-clean condition.

Licenses

At all times during the term of this Contract, CONTRACTOR shall possess a Class A General Engineering or Class B General Building Contractors License with the Contractor's State License Board (CSLB) to perform required work. CONTRACTOR'S CSLB license number is 581224. CONTRACTOR'S DIR registration number is 1000005926. CONTRACTORS City of Palmdale license number is 11611788. CONTRACTOR hereby certifies that it holds the required license(s).

Prevailing Wage

This Contract calls for work to be performed constituting public works. All labor is to be paid at prevailing wage rates. CONTRACTOR to determine proper wage classification. CONTRACTOR and all subcontractors must be registered with the State of California Department of Industrial Relations (DIR) as a public works contractor for the duration of the agreement and is responsible for any and all registration and/or renewal fees. The CITY will require certified payroll to be submitted and that it may be verified by a 3rd party labor compliance company. CONTRACTOR acknowledges and understands it must comply with the prevailing wage requirements as per Exhibit A definition for prevailing wage requirements.

Payment and Performance Bonds

Unless otherwise expressly provided in the bid documents, if any individual project

performed under the Contract exceeds $25,000, Contractor shall provide a performance bond and payment bond, each in amount equal to 100% of the project. Such bonds is requested by the CITY before work is to be performed on the specified project.

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by CITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by CITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract. Contractor acknowledges and understands it must comply with the prevailing wage requirements as set for in Exhibit "A".

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 730 days from the date of acceptance by CITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

2.6 CITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in CITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** CITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

CONTRACTOR's Team and Key Personnel are as follows:

Not Applicable

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by CITY.

3.2 **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 **Direct Responsibility.** All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by CITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless CITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 CONTRACT TERM

The term of this Contract is TWO (2) YEARS/TWENTY FOUR MONTHS, commencing on the effective date, with CITY reserving the option to extend the agreement for 1 additional terms of one year each.

5 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

5.1 **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the

acquisition and performance of the Contract for a period of five years after the completion of the Contract.

5.2 **Property of CITY.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

5.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

6 PRICE

CITY shall pay to CONTRACTOR an amount not to exceed TWO HUNDRED THOUSAND dollars ($200000.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

Hourly Labor / Equipment Rates for City of Palmdale					
Classification	***Regular Time***	***Overtime***	***Double Time***	***Holiday***	***Emergency Fee***
Labor					
Forman	$ 140.00	$ 190.00	$ 240.00	$ 240.00	$ 500.00
Journeyman Electrician	$ 130.00	$ 170.00	$ 217.00	$ 217.00	$ 400.00
Laborer	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Carpenter	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Plumber	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Welder	$ 130.00	$ 170.00	$ 217.00	$ 217.00	
Project Manager	$ 130.00	$ 130.00	$ 130.00	$ 130.00	
Accounting Manager	$ 130.00	$ 130.00	$ 130.00	$ 130.00	
Designer/Drafter	$ 150.00	$ 150.00	$ 150.00	$ 150.00	
Equipment					
Service Truck	$ 16.00				
Bucket Truck	$ 45.00				
Scissor Lift	$ 25.00				
Traffic Control Truck	$ 45.00				
Dump Truck	$ 65.00				
Back Hoe	$ 65.00				
Skid Steer	$ 55.00				
Excavator	$ 55.00				
Welding Truck	$ 65.00				
Attenuator Truck	$ 75.00				
Crane	$ 75.00				

*Option to Extend

CONTRACTOR shall be paid a one (1) hour minimum per call out.

Pricing shall be firm fixed price for stated term and shall include all costs in accordance with all contract requirements, including but not limited to fully burdened labor, payroll and other taxes, fringes, licenses and permits, insurance, workforce

productivity, coordination, transportation, field overhead, general, and administrative overhead, and profit. The Bidder shall submit all costs to the CITY. All hourly rates, service fees, or charges shall include any and all travel charges (i.e., portal to portal) necessary.

Payment shall be based on actual quantities and there is not guarantee that the CITY shall require any certain quantity. Payment Terms are Net 45 Days.

Material Mark-Up. CITY has the option to purchase parts for projects. In the event CONTRACTOR purchases material, parts, or components, reimbursement will be based on the price plus the stated material mark-up percentage supplied in the cost proposal form. The CONTRACTOR shall first submit a quote to the CITY for approval before work is performed. Any non-warrantied work must be approved by the CITY.

CITY may request CONTRACTOR submit a copy of the detailed vendor invoice for materials to serve as back-up to CONTRACTOR'S detailed invoice specifying all labor, parts, taxes, fees, etc. CITY will pay only for materials used for each job, as well as applicable sales tax. The mark-up percentage applies to material cost only.
6.1 An application for payment form must be submitted to CITY which shall include the following: a clear, detailed invoice reflecting work being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included with the payment requests.

6.2 CONTRACTOR shall maintain adequate records and shall permit inspection and audit by CITY of CONTRACTOR's charges under this Contract. CONTRACTOR shall make such records available to CITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to CITY and any specified public agencies. Such records shall be maintained by CONTRACTOR for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONTRACTOR shall retain its records for the time required by such laws.

6.3 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of CITY. No person employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of CITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the City.

8 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of CITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the contract documents. CONTRACTOR shall indemnify and hold harmless CITY and anyone directly or indirectly employed by CITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

9 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify CITY, its officers, employees, agents and elected and appointed boards (hereinafter “Indemnified Parties”) for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall

ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed “A” or better in the Best’s Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the City Attorney**.

10.1.1 Workers’ Compensation and Employer’s Liability

- Workers’ Compensation -- coverage as required by the State of California
- Employer’s Liability -- $1,000,000.00 each accident
  $1,000,000.00 policy limit bodily injury
  $1,000,000.00 each employee bodily injury by disease

10.1.2 Commercial General Liability

- $2,000,000.00 limit on a per occurrence basis
- $5,000,000.00 general aggregate limit

10.1.3 Commercial Automobile Liability

- $2,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.1.4 Pollution/Environmental Liability

- $2,000,000.00 limit on a per occurrence basis

10.2 All of CONTRACTOR’s policies shall contain an endorsement providing that written notice shall be given to CITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

A. An endorsement extending coverage to the City as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the City, and any other insurance maintained by the City shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: “The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale,

Palmdale Civic Authority, Housing Authority, Industrial Development Authority, Airport Authority, their officers, agents, employees and volunteers are named as additional insured".

B. "Severability of Interest" Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to CITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured. Within five (5) days of written request from CITY, CONTRACTOR shall deliver to CITY full and complete copies of all insurance policies required by this Contract.

10.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

10.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against CITY.

10.7 All insurance coverage must be maintained throughout the duration of this Contract.

10.8 Acceptable Proof of Insurance:

10.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

10.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the City Attorney.

10.8.3 *When pollution/environmental liability coverage is provided on a "claims made basis", CONTRACTOR will continue to renew the insurance for a period of five (5) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONTRACTOR, or its officers, employees or agents during the time this Agreement was in effect.

10.9 Notwithstanding any other provision of this Contract, CITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required

insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10.10 CONTRACTOR shall require any and all subcontractors working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 TERMINATION WITHOUT CAUSE

City reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to CITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be City's property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

12 TERMINATION FOR CAUSE

If CITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, CITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for CITY's dissatisfaction and suggest corrective measures. If, after thirty days, CONTRACTOR has failed to implement appropriate corrective measures, CITY may elect to terminate this Contract in whole or in part.

12.1 In the event CITY terminates this Contract, in whole or in part, for cause, CITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

12.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to

complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to CITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to CITY.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 11.

13 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between CITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

14 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are prepared or produced in the performance of this Contract are to be, and remain the property of CITY and shall be delivered to or left with CITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish CITY, upon its request, originals and reproducible and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows CITY to copy, reproduce and makes changes as CITY deems necessary.

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of CITY; provided, however, that claims for money due or to become due to CONTRACTOR from CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind CITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status . Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. CITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk's Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the CITY has any interest, financially or otherwise, in CONTRACTOR's firm.

17.2 For breach or violation of this warranty, CITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18 CONFLICT OF INTEREST

18.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be "financial interested" (as

provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by CITY on any matter.

18.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

18.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

19 COMPLIANCE WITH LAW

19.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

19.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

20 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

21.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

21.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party’s right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

22 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE:

SIGNATURE AREA

Ronda Perez
City Manager

SIGNATURE AREA

ADDRESS FOR NOTICE:
CITY OF PALMDALE
38250 Sierra Highway
Palmdale, CA 93550

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
City Attorney

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting City Clerk

M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION:

SIGNATURE AREA

Matthew Brey
President

ADDRESS FOR NOTICE:
M. BREY ELECTRIC, INC. dba MBE CONSTRUCTION
408 Elm Ave
Beaumont, CA 92223.

EXHIBIT "A"
PREVAILING WAGE REQUIREMENTS

1. This Contract calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774.

2. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City or may be obtained at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than $200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

3. Contractors and subcontractors who are ineligible to bid for work on, or be awarded, a public works project pursuant to Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.

4. Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the Labor Code, the Contractor and any subcontractors, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.

5. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

6. Each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.

7. Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of

the Contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.

8. Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

9. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

---------- INTERNAL USE ONLY ----------

■Certificate(s) and Endorsement(s) attached
■Confirmed business name on contract with certificate(s)
■Attached Agreement Checklist and met all requirements

AGREEMENT NO. A-8560
CONTRACT FOR SERVICES
BETWEEN THE CITY OF PALMDALE AND HOUALLA ENTERPRISES LTD. dba METRO BUILDERS & ENGINEERS GROUP, LTD.

This CONTRACT for services ("Contract" herein) is made and entered into by and between the City of Palmdale, a public body corporate and politic, (hereinafter called "CITY"), and HOUALLA ENTERPRISES LTD. dba METRO BUILDERS & ENGINEERS GROUP, LTD., a California Corporation, (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 CITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of Public Works Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the City project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to CITY:

On-Going General Contractor and Minor Construction Services.

The scope of services assigned to the CONTRACTOR shall include a range of projects from minor requests to significant construction projects, such as remodeling or repair work, at City-owned facilities and that will typically be time-sensitive in nature on an as-needed basis.

CONTRACTOR shall provide a full range of construction, maintenance, and repair services, including but not limited to:

• Framing and Rough Carpentry
• Finish Carpentry
• Drywall
• Millwork

• Glazing
• Ceramic and Mosaic Tile
• Plumbing
• Electrical
• Painting
• Roofing
• Sheet Metal
• HVAC
• Flooring
• Welding
• Asbestos Abatement
• Lead Abatement
• Masonry

CONTRACTORS regular business hours are Monday through Friday 8:00 a.m. to 5:00 p.m.

All service shall be completed in a workmanlike manner in compliance with all local, state, and federal rules, laws, and regulations, as applicable. CONTRACTOR agrees to remove all debris, trash, and unused materials when leaving the jobsite, leaving it in a broom-clean condition.

Licenses

At all times during the term of this Contract, CONTRACTOR shall possess a Class A General Engineering or Class B General Building Contractors License with the Contractor's State License Board (CSLB) to perform Required work. CONTRACTOR’s CSLB license number is 597589. CONTRACTOR’s DIR registration number is 1000002925 CONTRACTORS City of Palmdale Business License number is xxx. CONTRACTOR hereby certifies that it holds the required license(s).

Prevailing Wage

This Contract calls for work to be performed constituting public works. All labor is to be paid at prevailing wage rates. CONTRACTOR to determine proper wage classification. CONTRACTOR and all subcontractors must be registered with the State of California Department of Industrial Relations (DIR) as a public works contractor for the duration of the agreement and is responsible for any and all registration and/or renewal fees. The CITY will require certified payroll to be submitted and that it may be verified by a 3rd party labor compliance company. CONTRACTOR acknowledges and understands it must comply with the prevailing wage requirements as per Exhibit A definition for prevailing wage requirements.

Payment and Performance Bonds

Unless otherwise expressly provided in the bid documents, if any individual project performed under the Contract exceeds $25,000, Contractor shall provide a performance and payment bonds, each in amount equal to 100% of the project. Such bond is requested by the CITY before work is to be performed on the specified project.

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by CITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by CITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract. Contractor acknowledges and understands it must comply with the prevailing wage requirements as set for in Exhibit "A".

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 730 days from the date of acceptance by CITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

2.6 CITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in CITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** CITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

CONTRACTOR's Team and Key Personnel are as follows:

Not Applicable

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by CITY.

3.2 **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 **Direct Responsibility.** All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by CITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless CITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 CONTRACT TERM

The term of this Contract is TWO (2) YEARS/TWENTY FOUR MONTHS, commencing on the effective date, with CITY reserving the option to extend the agreement for 1 additional terms of one year each.

5 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

5.1 **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

5.2 **Property of CITY.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

5.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

6 PRICE

CITY shall pay to CONTRACTOR an amount not to exceed TWO HUNDRED THOUSAND dollars ($200000.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

Base Labor	Standard Time (Per hour)	Overtime (Per hour)	Double Time (Per hour)
Operator	$ 128.35	$ 165.68	$ 203.01
Ironworker Foremen	$ 138.22	$ 176.24	$ 214.30
Ironworker Journeymen	$ 136.27	$ 168.77	$ 201.26
Laborer Foreman	$ 109.78	$ 143.77	$ 177.76
Laborer Journeymen	$ 96.42	$ 124.29	$ 152.15
Carpenter Foremen	$ 119.72	$ 155.84	$ 191.16
Carpenter Journey	$ 115.76	$ 151.48	$ 187.20
Driver	$ 68.34	$ 102.51	$ 136.69
Electrician Journeymen	$ 119.64	$ 160.24	$ 200.77
Electrical Foremen	$ 145.19	$ 217.78	$ 290.38
Mason Foremen	$ 113.99	$ 147.85	$ 181.04
Mason Journeymen	$ 110.03	$ 143.89	$ 177.08

*Option to Extend

CONTRACTOR shall be paid a one (1) hour minimum per call out.

Pricing shall be firm fixed price for stated term and shall include all costs in accordance with all contract requirements, including but not limited to fully burdened labor, payroll and other taxes, fringes, licenses and permits, insurance, workforce productivity, coordination, transportation, field overhead, general, and administrative

overhead, and profit. The Bidder shall submit all costs to the CITY. All hourly rates, service fees, or charges shall include any and all travel charges (i.e., portal to portal) necessary.

Payment shall be based on actual quantities and there is not guarantee that the CITY shall require any certain quantity. Payment Terms are Net 45 Days.

Material Mark-Up. CITY has the option to purchase parts for projects. In the event CONTRACTOR purchases material, parts, or components, reimbursement will be based on the price plus the stated material mark-up percentage supplied in the cost proposal form. The CONTRACTOR shall first submit a quote to the CITY for approval before work is performed. Any non-warrantied work must be approved by the CITY.

CITY may request CONTRACTOR submit a copy of the detailed vendor invoice for materials to serve as back-up to CONTRACTOR'S detailed invoice specifying all labor, parts, taxes, fees, etc. CITY will pay only for materials used for each job, as well as applicable sales tax. The mark-up percentage applies to material cost only.
6.1 An application for payment form must be submitted to CITY which shall include the following: a clear, detailed invoice reflecting work being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included with the payment requests.

6.2 CONTRACTOR shall maintain adequate records and shall permit inspection and audit by CITY of CONTRACTOR's charges under this Contract. CONTRACTOR shall make such records available to CITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to CITY and any specified public agencies. Such records shall be maintained by CONTRACTOR for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONTRACTOR shall retain its records for the time required by such laws.

6.3 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of CITY. No person

employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of CITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the City.

8 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of CITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the contract documents. CONTRACTOR shall indemnify and hold harmless CITY and anyone directly or indirectly employed by CITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

9 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify CITY, its officers, employees, agents and elected and appointed boards (hereinafter “Indemnified Parties”) for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the

Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed "A" or better in the Best's Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the City Attorney**.

10.1.1 Workers' Compensation and Employer's Liability

- Workers' Compensation -- coverage as required by the State of California
- Employer's Liability -- $1,000,000.00 each accident
  $1,000,000.00 policy limit bodily injury
  $1,000,000.00 each employee bodily injury by disease

10.1.2 Commercial General Liability

- $2,000,000.00 limit on a per occurrence basis
- $5,000,000.00 general aggregate limit

10.1.3 Commercial Automobile Liability

- $2,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.1.4 Pollution/Environmental Liability

- $2,000,000.00 limit on a per occurrence basis

10.2 All of CONTRACTOR's policies shall contain an endorsement providing that written notice shall be given to CITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

A. An endorsement extending coverage to the City as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the City, and any other insurance maintained by the City shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: "The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale, Palmdale Civic Authority, Housing Authority, Industrial Development Authority,

Airport Authority, their officers, agents, employees and volunteers are named as additional insured".

B. "Severability of Interest" Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to CITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured. Within five (5) days of written request from CITY, CONTRACTOR shall deliver to CITY full and complete copies of all insurance policies required by this Contract.

10.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

10.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against CITY.

10.7 All insurance coverage must be maintained throughout the duration of this Contract.

10.8 Acceptable Proof of Insurance:

10.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

10.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the City Attorney.

10.8.3 *When pollution/environmental liability coverage is provided on a "claims made basis", CONTRACTOR will continue to renew the insurance for a period of five (5) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONTRACTOR, or its officers, employees or agents during the time this Agreement was in effect.

10.9 Notwithstanding any other provision of this Contract, CITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required

insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10.10 CONTRACTOR shall require any and all subcontractors working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 TERMINATION WITHOUT CAUSE

City reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to CITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be City's property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

12 TERMINATION FOR CAUSE

If CITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, CITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for CITY's dissatisfaction and suggest corrective measures. If, after thirty days, CONTRACTOR has failed to implement appropriate corrective measures, CITY may elect to terminate this Contract in whole or in part.

12.1 In the event CITY terminates this Contract, in whole or in part, for cause, CITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

12.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to

complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to CITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to CITY.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 11.

13 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between CITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

14 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are prepared or produced in the performance of this Contract are to be, and remain the property of CITY and shall be delivered to or left with CITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish CITY, upon its request, originals and reproducible and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows CITY to copy, reproduce and makes changes as CITY deems necessary.

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of CITY; provided, however, that claims for money due or to become due to CONTRACTOR from CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind CITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status . Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. CITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk's Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the CITY has any interest, financially or otherwise, in CONTRACTOR's firm.

17.2 For breach or violation of this warranty, CITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18 CONFLICT OF INTEREST

18.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be "financial interested" (as

provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by CITY on any matter.

18.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

18.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

19 COMPLIANCE WITH LAW

19.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

19.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

20 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

21.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

21.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party’s right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

22 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE:

SIGNATURE AREA

Ronda Perez
City Manager

SIGNATURE AREA

ADDRESS FOR NOTICE:
CITY OF PALMDALE
38250 Sierra Highway
Palmdale, CA 93550

HOUALLA ENTERPRISES LTD. dba METRO BUILDERS & ENGINEERS GROUP, LTD.:

SIGNATURE AREA

Fouad Houalla
President

ADDRESS FOR NOTICE:
HOUALLA ENTERPRISES LTD. dba METRO BUILDERS & ENGINEERS GROUP, LTD.
2610 Avon St.
Newport Beach, CA 92663

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
City Attorney

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting City Clerk

EXHIBIT "A"
PREVAILING WAGE REQUIREMENTS

1. This Contract calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774.

2. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City or may be obtained at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than $200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

3. Contractors and subcontractors who are ineligible to bid for work on, or be awarded, a public works project pursuant to Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.

4. Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the Labor Code, the Contractor and any subcontractors, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.

5. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

6. Each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.

7. Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of

the Contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.

8. Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

9. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

---------- INTERNAL USE ONLY ----------

□Certificate(s) and Endorsement(s) attached
□Confirmed business name on contract with certificate(s)
□Attached Agreement Checklist and met all requirements

AGREEMENT NO. A-8561
CONTRACT FOR SERVICES
BETWEEN THE CITY OF PALMDALE AND NASH CONSTRUCTION SERVICES INC.

This CONTRACT for services ("Contract" herein) is made and entered into by and between the City of Palmdale, a public body corporate and politic, (hereinafter called "CITY"), and NASH CONSTRUCTION SERVICES INC., a California Coporation , (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 CITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of Public Works Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the City project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to CITY:

On-Going General Contractor and Minor Construction Services.

The scope of services assigned to the CONTRACTOR shall include a range of projects from minor requests to significant construction projects, such as remodeling or repair work, at City-owned facilities and that will typically be time sensitive in nature on an as-needed basis..

CONTRACTOR shall provide a full range of construction maintenance, and repair services, including but not limited to:

• Framing and Rough Carpentry
• Finish Carpentry
• Drywall
• Millwork
• Glazing

• Ceramic and Mosaic Tile
• Plumbing
• Electrical
• Painting
• Roofing
• Sheet Metal
• HVAC
• Flooring
• Welding
• Asbestos Abatement
• Lead Abatement
• Masonry

CONTRACTORS regular business hours are Monday through Friday 8:00 a.m. to 5:00 p.m.

All service shall be completed in a workmanlike manner in compliance with all local, state, and federal rules, laws, and regulations, as applicable. CONTRACTOR agrees to remove all debris, trash, and unused materials when leaving the jobsite, leaving it in a broom-clean condition.

Licenses

At all times during the term of this Contract, CONTRACTOR shall possess a Class B General Building Contractors License with the Contractor's State License Board (CSLB) to perform required work. CONTRACTOR'S CSLB license number is 918613 CONTRACTOR'S DIR registration number is 10000064846. CONTRACTOR'S City of Palmdale license number is 11608156. CONTRACTOR hereby certifies that it holds the required license(s).

Prevailing Wage

This Contract calls for work to be performed constituting public works. All labor is to be paid at prevailing wage rates. CONTRACTOR to determine proper wage classification. CONTRACTOR and all subcontractors must be registered with the State of California Department of Industrial Relations (DIR) as a public works contractor for the duration of the agreement and is responsible for any and all registration and/or renewal fees. The CITY will require certified payroll to be submitted and that it may be verified by a 3rd party labor compliance company. CONTRACTOR acknowledges and understands it must comply with the prevailing wage requirements as per Exhibit A definition for prevailing wage requirements.

Payment and Performance Bonds

Unless otherwise expressly provided in the bid documents, if any individual project performed under the Contract exceeds $25,000,Contractor shall provide a performance and payment bonds, each in amount equal to 100% of the project. Such bonds is requested by the CITY before work is to be performed on the specified project..

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by CITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by CITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract. Contractor acknowledges and understands it must comply with the prevailing wage requirements as set for in Exhibit "A".

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 730 days from the date of acceptance by CITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

2.6 CITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in CITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** CITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

CONTRACTOR's Team and Key Personnel are as follows:

Not Applicable

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by CITY.

3.2 **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 **Direct Responsibility.** All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by CITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless CITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 CONTRACT TERM

The term of this Contract is TWO (2) YEARS/TWENTY FOUR MONTHS, commencing on the effective date, with CITY reserving the option to extend the agreement for 1 additional terms of one year each.

5 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

5.1 **Records**. The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other “records” relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

5.2 **Property of CITY.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

5.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

6 PRICE

CITY shall pay to CONTRACTOR an amount not to exceed TWO HUNDRED THOUSAND dollars ($200000.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

PREVAILING WAGE HOURLY RATE FEE SCHEDULE

PROJECT: RFQA: 23-001-3900

CRAFT	HOURLY REGULAR TIME	HOURLY OVERTIME	DOUBLE TIME/ EMERGENCY	HOLIDAY
GROUP 1 LABORER	$125.00	$185.00	$250.00	$250.00
ELECTRICIAN	$125.00	$185.00	$250.00	$250.00
CARPENTER	$150.00	$225.00	$300.00	$300.00
PLUMBING	$150.00	$225.00	$300.00	$300.00
PAINTER AV	$125.00	$185.00	$250.00	$25.00
DRYWALL INSTALLER	$125.00	$185.00	$250.00	$250.00
DRYWALL FINISHER	$100.00	$150.00	$200.00	$200.00

NECESSARY EQUIPMENT RENTALS AND MATERIALS TO BE BILLED AT ACTUAL COST.
SUPERVISOR RATES ARE THE SAME AS THE CORRESPONDING CRAFT
PRICES ARE IN EFFECT UNTIL THE NEXT WAGE INCREASE IN EACH CRAFT AND CLASSIFICATION

*Option to Extend

CONTRACTOR shall be paid a one (1) hour minimum per call out.

Pricing shall be firm fixed price for stated term and shall include all costs in

accordance with all contract requirements, including but not limited to fully burdened labor, payroll and other taxes, fringes, licenses and permits, insurance, workforce productivity, coordination, transportation, field overhead, general, and administrative overhead, and profit. The Bidder shall submit all costs to the CITY. All hourly rates, service fees, or charges shall include any and all travel charges (i.e., portal to portal) necessary.

Payment shall be based on actual quantities and there is not guarantee that the CITY shall require any certain quantity. Payment Terms are Net 45 Days.

Material Mark-Up. CITY has the option to purchase parts for projects. In the event CONTRACTOR purchases material, parts, or components, reimbursement will be based on the price plus the stated material mark-up percentage supplied in the cost proposal form. The CONTRACTOR shall first submit a quote to the CITY for approval before work is performed. Any non-warrantied work must be approved by the CITY.

CITY may request CONTRACTOR submit a copy of the detailed vendor invoice for materials to serve as back-up to CONTRACTOR'S detailed invoice specifying all labor, parts, taxes, fees, etc. CITY will pay only for materials used for each job, as well as applicable sales tax. The mark-up percentage applies to material cost only.
6.1 An application for payment form must be submitted to CITY which shall include the following: a clear, detailed invoice reflecting work being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates must also be included with the payment requests.

6.2 CONTRACTOR shall maintain adequate records and shall permit inspection and audit by CITY of CONTRACTOR's charges under this Contract. CONTRACTOR shall make such records available to CITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to CITY and any specified public agencies. Such records shall be maintained by CONTRACTOR for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONTRACTOR shall retain its records for the time required by such laws.

6.3 **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of CITY. No person employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of CITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the City.

8 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of CITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the contract documents. CONTRACTOR shall indemnify and hold harmless CITY and anyone directly or indirectly employed by CITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

9 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify CITY, its officers, employees, agents and elected and appointed boards (hereinafter “Indemnified Parties”) for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall

ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed “A” or better in the Best’s Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the City Attorney**.

10.1.1 Workers’ Compensation and Employer’s Liability

- Workers’ Compensation -- coverage as required by the State of California
- Employer’s Liability -- $1,000,000.00 each accident
  $1,000,000.00 policy limit bodily injury
  $1,000,000.00 each employee bodily injury by disease

10.1.2 Commercial General Liability

- $2,000,000.00 limit on a per occurrence basis
- $5,000,000.00 general aggregate limit

10.1.3 Commercial Automobile Liability

- $2,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.1.4 Pollution/Environmental Liability

- $2,000,000.00 limit on a per occurrence basis

10.2 All of CONTRACTOR’s policies shall contain an endorsement providing that written notice shall be given to CITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

A. An endorsement extending coverage to the City as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the City, and any other insurance maintained by the City shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: “The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale,

Palmdale Civic Authority, Housing Authority, Industrial Development Authority, Airport Authority, their officers, agents, employees and volunteers are named as additional insured".

B. "Severability of Interest" Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to CITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured. Within five (5) days of written request from CITY, CONTRACTOR shall deliver to CITY full and complete copies of all insurance policies required by this Contract.

10.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

10.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against CITY.

10.7 All insurance coverage must be maintained throughout the duration of this Contract.

10.8 Acceptable Proof of Insurance:

10.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

10.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the City Attorney.

10.8.3 *When pollution/environmental liability coverage is provided on a "claims made basis", CONTRACTOR will continue to renew the insurance for a period of five (5) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONTRACTOR, or its officers, employees or agents during the time this Agreement was in effect.

10.9 Notwithstanding any other provision of this Contract, CITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required

insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10.10 CONTRACTOR shall require any and all subcontractors working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 TERMINATION WITHOUT CAUSE

City reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to CITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be City's property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

12 TERMINATION FOR CAUSE

If CITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to satisfactorily perform the services specified in this Contract, CITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for CITY's dissatisfaction and suggest corrective measures. If, after thirty days, CONTRACTOR has failed to implement appropriate corrective measures, CITY may elect to terminate this Contract in whole or in part.

12.1 In the event CITY terminates this Contract, in whole or in part, for cause, CITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

12.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to

complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to CITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to CITY.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 11.

13 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between CITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

14 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are prepared or produced in the performance of this Contract are to be, and remain the property of CITY and shall be delivered to or left with CITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish CITY, upon its request, originals and reproducible and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows CITY to copy, reproduce and makes changes as CITY deems necessary.

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of CITY; provided, however, that claims for money due or to become due to CONTRACTOR from CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind CITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status . Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. CITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk's Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the CITY has any interest, financially or otherwise, in CONTRACTOR's firm.

17.2 For breach or violation of this warranty, CITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18 CONFLICT OF INTEREST

18.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be "financial interested" (as

provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by CITY on any matter.

18.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

18.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

19 COMPLIANCE WITH LAW

19.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

19.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

20 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

21.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

21.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party’s right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

22 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE:

SIGNATURE AREA

Ronda Perez
City Manager

SIGNATURE AREA

ADDRESS FOR NOTICE:
CITY OF PALMDALE
38250 Sierra Highway
Palmdale, CA 93550

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
City Attorney

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting City Clerk

NASH CONSTRUCTION SERVICES INC.:

SIGNATURE AREA

Harold Lester Nash
President

ADDRESS FOR NOTICE:
NASH CONSTRUCTION SERVICES INC.
32128 Crystalaire Dr.
Llano, CA 93544

EXHIBIT "A"
PREVAILING WAGE REQUIREMENTS

1. This Contract calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774.

2. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City or may be obtained at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than $200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

3. Contractors and subcontractors who are ineligible to bid for work on, or be awarded, a public works project pursuant to Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.

4. Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the Labor Code, the Contractor and any subcontractors, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.

5. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

6. Each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.

7. Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of

the Contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.

8. Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

9. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

---------- INTERNAL USE ONLY ----------

■Certificate(s) and Endorsement(s) attached
■Confirmed business name on contract with certificate(s)
■Attached Agreement Checklist and met all requirements

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC WORKS DEPARTMENT**

DISTRICT: **ALL**

SUBJECT: **APPROVE AGREEMENT WITH SOUTHERN CALIFORNIA EDISON (SCE) FOR PARTICIPATION IN THE SMALL SITE REBATE PROGRAM FOR THE PURCHASE AND INSTALLATION OF THREE ELECTRIC VEHICLE (EV) CHARGING STATIONS AT THE PALMDALE CITY LIBRARY**

ISSUE

Approve agreement with Southern California Edison (SCE) for participation in the Small Site Rebate Program for the purchase and installation of three Electrical Vehicle (EV) Charging Stations at the Palmdale City Library.

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager or her designee to execute Agreement No. A-8595 with SCE to participate in the SCE Small Site Rebate Program, including non-substantive changes.

BACKGROUND

SCE's Charge Ready Small Site Rebate Program provides qualified non-residential and multifamily participants with a rebate to offset the costs of purchasing and installing EV Charging Stations. SCE has approved the City for a maximum of four EV charging ports (by installing two single units and one dual unit). The rebate applies to costs incurred by the customer for the purchase of EV charging equipment, the installation, and any supporting electrical infrastructure costs on the customer side of the meter (from the meter to the interconnection point with the charging equipment). Participants (the City) are to provide and construct all conduits and wires leading to interconnection points with the charging equipment. Participants will purchase, install, own, and operate the equipment for at least ten years. The Small Site Rebate amount offered is a fixed one-time rebate, but the actual amount of the incentive paid will not exceed the participant's actual costs.

DISCUSSION

The City submitted three applications to SCE's Small Site Rebate Program for three locations. SCE had specific criteria that must be met for each proposed location, which

created a limitation on which areas could be proposed. Of those three, the Palmdale City Library was approved by SCE. Staff continue to identify and apply for funding for the installation and purchase of EV Charging Stations throughout the City. The current EV Charging Stations available at City facilities are as follows:

Location	Type
Oasis Park	4 — Level 2 (2 Dual)
Civic Center	2 — Level 2 (1 Dual) 1 — DC Fast
Ave S Park and Ride	4 — DC Fast
PTC	12 — Level 2 (6 Dual)
Rancho Vista Park	1 — Level 2
McAdam Park	12 — Level 2 (6 Dual) – COMING SOON
City Library	4 — Level 2 (2 Single & 1 Dual) – COMING SOON

FISCAL IMPACT

$60,000; SCE Small Site Rebate Program will cover up to 100% of the purchase, installation, and maintenance of four EV Charging Ports at Palmdale City Library by installing two single and one dual unit. The anticipated total cost for this work is $40,000. The infrastructure work, which is the City's responsibility, is estimated to cost $20,000 and is budgeted in Contract Services- Special Projects account# 10131004-721930-6006.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

A. Seek innovative, cost-effective, customer-focused methods of service delivery.
B. Implement and administer environmentally sustainable programs.

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community.

Prepared by:	Lynn Glidden, P.E., Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

1. SCE Draft Agreement No. A-8595
2. SCE Small Site Rebate Program Process

Charge Ready
- Small Site Rebate -
Program Agreement

PROGRAM PARTICIPATION TERMS AND CONDITIONS

This Charge Ready Small Site Rebate Participation Agreement (Agreement) sets forth the terms and conditions for the Program Participant to participate in the Program.

Pursuant to the terms of this Agreement, and if applicable, SCE will (1) install the Utility-Side of the meter Infrastructure (as defined herein) at no cost to the Program Participant after all terms and conditions have been met by the Program Participant.

Program Participant hereby agrees to the following terms and conditions of the Charge Ready Small Site Rebate Program (the "Program").

APPROVED CHARGING PORTS

1. Total Number of Approved Charging Ports:

The Program Participant is required to install the quantity and power level of approved Charging Ports set forth in this Agreement. Failure to procure and install the agreed upon number may lead to termination of this Agreement, at SCE's discretion.

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Number of Charging Ports and Power Levels approved by SCE.

Power Level (L2) Port count: ## (port count imported to form)

APPROVED SITE LOCATION AND DESIGN

2. Description of Approved Location at the Site:

Brief description of the mutually approved location on the Program Participant's Site where Infrastructure will be installed.

Site Description: ## (Site description imported to form)
Site Address: ## (Site description imported to form)

PROGRAM PARTICIPATION TERMS AND CONDITIONS

Program Participant agrees that its participation in the Program is subject to the following terms and conditions:

3. Definitions.

a. Authority Having Jurisdiction (AHJ): The responsible government entity having geographically based jurisdiction that typically approves, inspects, and permits construction projects (e.g., City, County, Fire, Division of State Architect, etc.).

b. **Approved Product List (APL):** The list of Charging Equipment meeting SCE's technical requirements and approved by SCE for use in its Charge Ready Programs. Program Participant must select Charging Equipment from the Approved Product List to qualify to receive the Small Site Rebate.

c. **California Public Utilities Commission (CPUC):** The California state regulatory agency that is responsible for regulating privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies.

d. **Charging Equipment:** Qualifying Charging Equipment that meets the technical specifications set forth by SCE. Charging Equipment that qualifies for Rebate is listed in SCE's Approved Product List (APL).

e. **Charging Equipment Supplier**: The entity from which the Charging Equipment is purchased.

f. **Charging Ports**: See Charging Stations.

g. **Charging Stations – EV Charging Equipment**: EV Charging Equipment interconnects with the electricity grid at a charging site to an electric vehicle, whether using alternating current (AC) or direct current (DC). An individual charging station unit may contain one or more charging ports for the purpose of connecting the electric vehicle to a grid connected power source capable of recharging the vehicle's battery pack. The individual connectors of the Charging Station are referred to as ports (referred to in this agreement as Charging Ports). Each charging station may charge one or more vehicles depending on the number of ports with which each unit is equipped. For dual-port stations, each port must be capable of delivering full power to both vehicles that are charging simultaneously. For example, a dual-port L2 station rated at 7.2kW must be able to deliver 7.2kW of power to both vehicles when two vehicles are charging simultaneously.

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h. **Small Site Rebate Program Guidelines:** Program reference documents developed by SCE that provide Small Site Rebate Program information, including, but not limited to an overview of the program, rebate submission, rebate claim, and general program requirements.

i. **Commitment Period:** The 10-year period where Program Participant must maintain all Charging Equipment in working order at the Site. The Commitment Period will commence on the Charging Equipment's In-Service Date.

j. **Customer-Side Infrastructure:** See "Make-Ready Infrastructure."

k. **CPUC's Transportation Electrification Safety Requirements Checklist**: The Safety Requirements Checklist applies to CPUC-Approved Transportation Electrification Programs.

l. **Demand Response:** Demand Response (DR) programs encourage a reduction of electricity use during certain time periods, typically during on-peak hours or when demand for electricity is high, and/or can provide incentives to use electricity during periods of excess generation or when demand for electricity is lower.

m. **Make Ready Infrastructure Design**: Map and related documents, as applicable, that show the layout of the Infrastructure and Charging Equipment, including but not limited to, conduit routing and equipment placement.

n. **Final Invoice**: Statement of the total amount paid by Program Participant to Charging Equipment Supplier(s) for the purchase, and installation of the Charging Equipment

o. **Grant of Easement**: A contractual agreement, if applicable, to grant right of way for SCE to construct, maintain, operate, and repair any SCE-installed infrastructure.

p. **In-Service Date:** The earliest date on which the EV Charging Equipment is installed and operational.

q. **Level 2 (L2):** Medium power charging, typically delivered between 220 and 240 volts.

r. **Make-Ready Infrastructure:** Infrastructure located on the utility-side of the meter is also referred to as the Make-Ready Infrastructure. The Utility-Side Infrastructure includes all infrastructure work from SCE's distribution system to a new circuit panel that may be installed to support EV charging. SCE will always be responsible for designing, procuring, installing, and maintaining the necessary infrastructure located on the utility side of the meter. The Customer-Side Make-Ready Infrastructure includes all infrastructure beginning with the panel to the Charging Stations. Customers will be responsible for designing, procuring, installing, and maintaining the infrastructure and EV Chargers located on the customer side of the meter.

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s. **Multi-Family Property** (also referred to as multi-unit dwelling, or MUD). Details on qualifying property types are found in the program guidelines.

t. **Network Service Provider:** The third-party entity that will provide Network Services for the Charging Equipment. The Network Service Provider will be required to transmit port level data and other information to SCE complying with Program requirements. The specific requirements are further described in the Program Guidelines.

u. **On-Line Program Enrollment Portal:** The program's enrollment site.

v. **Power Levels**: Charging Equipment Power Levels. Level 2 (L2) Charging: Medium power charging, typically delivered between 220 and 240 volts.

w. **Program Guidelines:** see Small Site Rebate Program Guidelines.

x. **Program:** Also referred to as the Small Site Rebate Program.

y. **Program Participant:** The SCE non-residential customer that enters into this Agreement.

z. **Property Owner/Site Owner:** Individual authorized representative of entity holding title in the Site where the Charging Equipment and Infrastructure will be located.

aa. **Rebate Payment:** The payment made by SCE to Program Participant, or its designated assignee, after the eligible Program Participant procures and installs the Charging Equipment and submits the required documents, in accordance with the Small Site Rebate Program Guidelines and this Agreement, as verified by SCE, in SCE's sole discretion.

bb. **Reservation Approval Date:** Date on which SCE accepts application and reserves funds.

cc. **Site:** The premises, owned, leased, or operated by Program Participant, where the Charging Equipment will be installed.

dd. **Time-of-Use (TOU) Rates:** TOU rate plans feature energy charges that vary based on the time of day, the day of the week, and the season. Some plans also include demand charges that are based on the maximum amount of electricity your business uses at once. For more information about SCE's TOU rate plans, please visit https://www.sce.com/business/rates/time-of-use, or https://www.sce.com/business/rates/electric-car-business-rates.

ee. **T&D Narrative:** The set of working drawings of the Utility-Side of the Meter Infrastructure. This includes project specifications, conduit routing, electrical equipment specifications and calculations.

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4. **Eligibility.**

Program Participant certifies that it meets, and will continue to meet throughout its participation in the Program, all eligibility requirements of the Program, including, but not limited to:

a. Program Participant is a non-residential SCE entity with at least one active service account.
b. The installation site is located in SCE's service territory.
c. Program Participant agrees to provide, or cause the Site Owner to provide, SCE with the rights of way across public or private property (as applicable) and to obtain any necessary permits to install Charging Equipment, without cost to SCE.
d. Program Participant will comply with all Program requirements outlined in the Charge Ready Small Site Rebate Program Guidelines.

5. **Additional Representations of Program Participant during the Term of the Agreement.**

Program Participant:

a. Agrees that rebates will only apply to the number of Charging Stations approved by SCE for installation.

b. All charging equipment must be selected from SCE's Approved Product List (APL) or otherwise approved by SCE for installation under this Program, in a quantity approved by SCE.

c. Program Participant agrees to have APL listed charging equipment installed by a qualified C-10 licensed and insured contractor.

d. Agrees to ensure their EVSE equipment installer follows all relevant State and local codes, and AHJ permitting requirements. All installed equipment must be correctly rated for the location where it will be installed (outdoor rated if applicable, conforming with ventilation requirements). The EV charging current shall not exceed 80% of the branch circuit rating. All EVSE installations must comply with the SB350 safety requirement checklist.

e. Agrees to ensure their EVSE equipment installer will not install and energize any EVSE or associated equipment capable of generation or bidirectional operation without Permission to Operate from SCE.

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f. Agrees to procure, own, install, operate, and maintain the Charging Equipment in good working order at the site for a minimum of ten (10) years from the In-Service Date of Charging Equipment ("Commitment Period").

g. Agrees that, if at any time during the Commitment Period the Charging Equipment is replaced, only SCE approved EVSE will be installed and all associated costs will be the responsibility of the Program Participant.

h. Agrees to contract with a qualified and SCE approved electric vehicle charging equipment Network Service Provider to record and transmit EV charging usage and other data to SCE.

i. Program Participant authorizes SCE to act on Program Participant's behalf to voluntarily grant a Third Party access to receive information relating to Charging Station data, billing records, billing history, pricing information, and all meter usage data used for bill calculation for all meters participating in this Program. This authorization expires ten (10) years from the Charging Equipment's In-Service Date.

j. Program participant authorizes the use of the collected Charging Station and related meter and billing data for regulatory reporting, program evaluation, industry forums, case studies or other similar activities, in accordance with applicable laws and regulations.

k. Acknowledges and agrees that the actual Make-Ready Infrastructure may vary from the SCE's Make-Ready T&D Narrative, if, in SCE's sole discretion, actual Site conditions or AHJ direction requires such changes.

l. Acknowledges that funding pursuant to this Agreement is only reserved after SCE receives a copy of this Agreement signed by Program Participant and Property Owner (if different from Program Participant). The Program Participant also acknowledges that reserved funding may be withdrawn, and SCE may terminate this Agreement, both in SCE's sole discretion, if Program Participant breaches the Agreement.

m. Agrees to comply with the established timelines and required documentation set forth in the Program Guidelines.

n. Represents and warrants that if Program Participant has applied for or received any other incentives or rebates for the Charging Equipment, Customer-Side Make-Ready Infrastructure, or Charging Equipment Maintenance and Networking program Participant shall notify SCE of any such incentives or rebates as soon as reasonably practicable. In the event that any such incentives or rebates, when combined with Program rebates, would reimburse Program Participant for more than 100 percent of their costs, SCE shall decrease the issued rebate amount if not yet paid, or if already paid, submit a reimbursement request to the Program Participant for the amount of the Rebate Payment exceeding 100 percent of the Participants costs.

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o. Program Participant agrees that the electricity meter(s) associated with the EV charging equipment will be provided service under a TOU rate plan.

p. Participants must enroll in at least one qualifying Demand Response Program.

q. Agrees to ensure information of newly installed Charging Equipment, if accessible to the general public, will be registered with the US Department of Energy's Alternative Fuel Data Center (https://afdc.energy.gov/stations/#/analyze), and with the US Department of Energy's EV Charging Station Locations mapping tool, accessible at (https://www.afdc.energy.gov/fuels/electricity_locations.html#/find/nearest?fuel=ELEC), and that only one set of information is reported between the Program Participant and Charging Equipment Supplier.

r. Agrees to submit a completed IRS tax form W-9, and California Franchise Tax Board form 590 if applicable, or to provide line items from those forms as SCE may request, in order for SCE to process any Rebate Payment.

s. Represents and warrants that the execution and delivery of this Agreement, and the performance by Program Participant of its obligations under this Agreement, have been duly and validly authorized, and this Agreement is a legal, valid and binding obligation of Program Participant.

t. SCE, at its sole discretion and in accordance with its applicable tariffs, design standards, and AHJ permitting requirements, will locate, design, and install the utility-side Infrastructure.

SCE is responsible for all costs associated with Infrastructure deployed by SCE pursuant to this Agreement.

u. Agrees to participate in SCE sponsored customer satisfaction and other surveys following completion of the Project, upon request of SCE.

6. SCE Representations.

a. SCE will issue the Rebate, if applicable, after the Program Participant has submitted all required documentation as outlined in the Small Site Rebate Program Guidelines and once SCE has verified installation of the Charging Equipment. Rebate Payment is also subject to Program Participant meeting all Program requirements.

b. The actual Rebate Payment amount shall not exceed the actual costs of equipment purchase and installation.

7. **Term and Termination**.

a. Term: The term of this Agreement shall begin upon the date that both Parties have signed the Agreement and end ten (10) years from the Charging Equipment's In-Service Date, unless otherwise terminated earlier pursuant to this Agreement.

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b. Termination: If the Program Participant fails to comply with any of the terms and conditions of this Agreement, SCE, in its sole discretion, may terminate this Agreement after sending Program Participant a notice of default that remains uncured for five (5) business days from receipt, except in the case of a safety or security violation, in which case, SCE may terminate the Agreement immediately and take all other necessary actions, including, but not limited to, disconnecting power to the Charging Equipment, or any other actions that SCE, in its sole discretion, deems necessary to cure such safety or security violation(s).

c. Termination Costs: If this Agreement is terminated prior to the end of the term because (1) Program Participant terminates its participation in this Program; (2) Program Participant, prior to the end of the Commitment Period, fails to install, or removes without replacing, the Charging Equipment; or (3) SCE terminates this Agreement due to Program Participant's failure to comply with the terms and conditions of the Agreement, in accordance with Section 5.b., above, the Program Participant shall pay: (a) all costs actually incurred, or committed to be incurred, by SCE, as of the termination date, in connection with providing the Small Site Rebate; and (b) the actual Rebate Payment amount (if already paid). If the Charging Equipment is installed, the amount due to SCE for both (a) and (b) above will be prorated over a ten-year period, beginning from the Charging Equipment's In-Service Date. SCE will invoice the Program Participant for such costs, and Program Participant shall pay such invoice within 60 days of receipt.

8. Indemnification and Liability; No Representations or Warranties.

a. Program Participant understands that SCE makes no representations regarding manufacturers, dealers, contractors, materials, or workmanship of the Charging Equipment. Further, SCE makes no warranty, whether express or implied, including without limitation the implied warranties of merchantability and fitness for any particular purpose, use, or application of the products and services under the Program. Program Participant agrees that SCE has no liability whatsoever concerning (1) the quality, safety or installation of such products, including their fitness for any purpose, (2) the workmanship of any third parties, or (3) the installation or use of the products. Program Participant hereby waives any and all claims against SCE, its parent companies, directors, officers, employees, or agents, arising out of activities conducted by or on behalf of SCE under the Program. Without limiting the generality of the foregoing, Neither SCE nor Program Participant shall be liable hereunder for any type of damages, whether direct, or indirect, incidental, consequential, exemplary, reliance, punitive or special damages, including damages for loss of use, regardless of the form of action, whether in contract, indemnity, warranty, strict liability or tort, including negligence of any kind.

b. Indemnification of SCE. To the fullest extent permitted by law, Program Participant shall, at SCE's request, indemnify, defend, and hold harmless SCE, and its parent company, subsidiaries, affiliates, and their respective shareholders, officers, directors, employees, agents, representatives, successors, and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs, or expenses, including without limitation reasonable attorneys' fees (a "Claim"), resulting from (a) any breach of the representations, warranties, covenants, or obligations of Program Participant under this Agreement, (b) any act or omission of Program Participant, whether based upon Program Participant's negligence, strict liability, or otherwise, in connection with the performance of this Agreement, or (c) any third-party claims of any kind, whether based upon negligence, strict liability, or otherwise, arising out of or connected in any way to Program Participant's performance or nonperformance under this Agreement. This indemnification obligation shall not apply to the extent that such injury, loss, or damage is caused by the sole negligence or willful misconduct of SCE.

c. Responsibility for Repairs. If Participant -installed equipment damages SCE-owned Infrastructure, Participant will be responsible for any costs associated with making any necessary repairs. If SCE identifies an improper installation of Participant-installed equipment, Participant agrees to pay for and be responsible for making any necessary corrections in the manner requested by SCE.

d. Defense of Claim. If any Claim is brought against the Indemnified Parties, Program Participant shall, at SCE's request, assume the defense of such Claim, with counsel reasonably acceptable to the Indemnified Parties, unless in the opinion of counsel for the Indemnified Parties a conflict of interest between the Indemnified Parties and

DRAFT

Program Participant exists with respect to such Claim. If a conflict precludes Program Participant from assuming the defense, then Program Participant shall reimburse the Indemnified Parties on a monthly basis for the Indemnified Parties' defense costs through separate counsel of the Indemnified Parties' choice. If Program Participant assumes the defense of the Indemnified Parties with acceptable counsel, the Indemnified Parties, at their sole option and expense, may participate in the defense with counsel of their own choice without relieving Program Participant of any of its obligations hereunder.

9. Miscellaneous

All Applicable Tariffs Apply. All applicable SCE tariffs apply to service provided pursuant to this Agreement, with the following exceptions:

a. Rules 15 and 16. Distribution Line and Service Extensions: Because SCE will design and install the Utility-Side of the meter Infrastructure at no cost to Program Participant, sections in Rules 15 and 16 that address applicant responsibilities or options are not applicable to Program Participants while participating in the Charge Ready Small Site Rebate Program. This may include, but is not limited to, allowances, contributions or advances, payments, refunds, and design and installation options. This exception does not apply to certain responsibilities found in Rule 16, such as, but not limited to, Section A.10, providing rights of way or easements; Section A.11, providing access to the location; and Section D.1, providing a clear route for the Service Extension.

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b. Survival. Program Participant's obligation to pay Termination Costs and to indemnify the Indemnified Parties shall survive the expiration or termination of this Agreement.

c. Assignment. Program Participant shall not assign this Agreement without the prior written consent of SCE; to be granted or denied in SCE's sole discretion. Any assignment and assumption shall be in a form acceptable to SCE, in SCE's sole discretion.

d. All applicable SCE tariffs apply to service provided pursuant to this Agreement including, but not limited to, the applicable provisions of SCE's Charge Ready Program (CRP) Tariff Schedule filed and authorized by the California Public Utilities Commission. This Agreement shall be subject to such changes or modifications by the Public Utilities Commission of the State of California, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

e. This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California.

f. Should a conflict exist between the Small Site Rebate Program Guidelines and this Agreement, then this Agreement shall control with respect to such conflict.

g. Incentives and Rebates are taxable and if greater than $600 will be reported to the IRS unless the payee is exempt. SCE will report the rebate as income on IRS Form 1099. The payee should consult its tax advisor concerning the taxability of the Rebate Payment.

h. This Agreement may be executed and transmitted electronically. Scanned and electronic signatures shall be deemed original signatures for purposes of the Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as written signatures. SCE will verify for completeness and accuracy and will notify the applicant to proceed and reserve funding accordingly.

AGREEMENT BY PROGRAM PARTICIPANT

By signing this document, you represent that the information provided pursuant to this Agreement is true, accurate and complete, and that you will comply with the terms and conditions set forth in this Agreement. You also represent and warrant that you are a duly authorized representative of Program Participant with the requisite authority to enter into this Agreement. For federal government Program Participants, you must be a Contracting Officer authorized to enter into this Agreement.

Name of Program Participant: _____(Company Applicant Name)

Site Address: _____

Name of Program Participant Representative:

_____

Title of Program Participant Representative:

_____

I certify that the information provided is accurate and complete and that I have authority to sign this Agreement on behalf of Applicant.

_____
Signature

Date: _____

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AGREEMENT BY PROPERTY OWNER (If Program Participant is the Property Owner, no separate signature is required.)

By signing this document, you represent and warrant that you are a duly authorized representative of the owner of the property on which the Site is located and that you have the requisite authority to consent to the use of the property in the manner set forth in this Agreement. You also represent that Property Owner hereby approves the installation and operation of the Infrastructure and the Charging Equipment, as well as any other necessary equipment to deploy the Charging Equipment pursuant to the Program as described in this Agreement. You further agree to execute the Easement Agreement within thirty (30) calendar days after Easement Agreement is provided by SCE.

Name of Property Owner Representative:

_____

Title of Property Owner Representative:

I certify that I have authority to sign this Agreement on behalf of the Property Owner

_____

Signature

Date: _____

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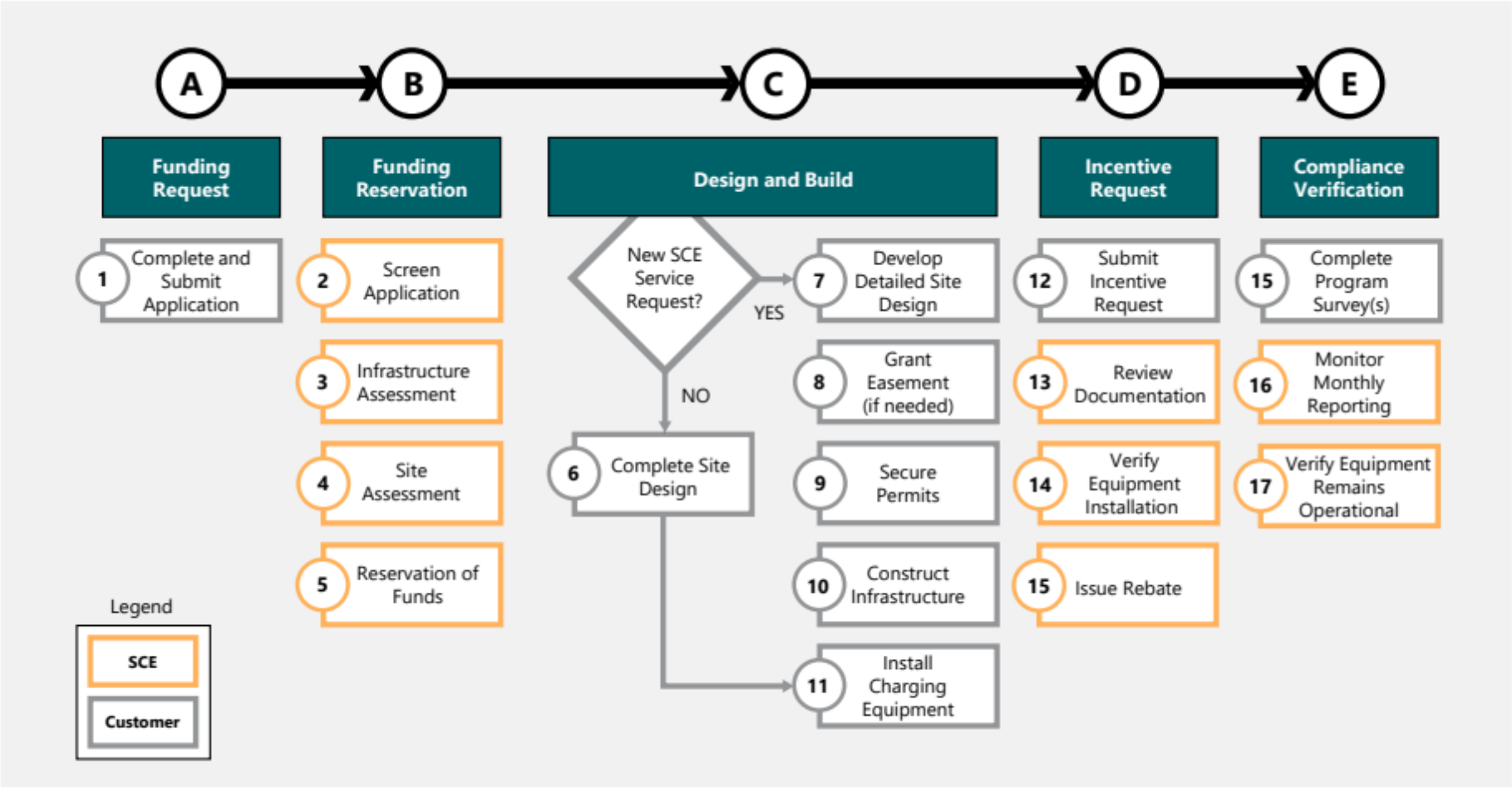
Small Site Rebate Program Process

The following activity flow chart outlines the process steps from the initial starting point of application submission through the issuance of the Small Site Rebate check. Following the diagram are the detailed activities and steps included in the overall program process.

Process Diagram: Small Site Rebate Program



City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC WORKS DEPARTMENT**

DISTRICT: **1**

SUBJECT: **CONSIDERATION AND ADOPTION OF RESOLUTION NO. CC 2023-059, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING THE RENAMING OF AVENUE Q-6 TO HAMMACK AVENUE (AVENUE Q-6) FROM SIERRA HIGHWAY TO 10TH STREET EAST**

ISSUE

Consideration and adoption of Resolution No. CC 2023-059, a Resolution of the City Council of the City of Palmdale approving the renaming of Avenue Q-6 to Hammack Avenue (Avenue Q-6) between Sierra Highway to 10th Street East.

RECOMMENDATION

1. Staff recommends City Council consider the renaming of Avenue Q-6 to Hammack Avenue (Avenue Q-6) from Sierra Highway to 10th Street East and,

2. Adopt Resolution No. CC 2023-059 authorizing the City to change the street name of Avenue Q-6, between Sierra Highway to 10th Street East, and allow staff to prepare necessary signage.

BACKGROUND

The Hammack Center was named after Deputy Richard B. Hammack, who died in the line of duty on May 11, 1992. Deputy Hammack had served with the Los Angeles County Sheriff's Antelope Valley Station for 7 ½ years.

Due to structural issues, the Hammack Center is scheduled for demolition. The City of Palmdale would like to commemorate Deputy Richard B. Hammack by renaming a portion of Avenue Q-6 near the Palmdale Station.

DISCUSSION

Section 34091.1 of the California Government Code states, "*Whenever the legislative body finds that a name should be adopted and applied to any city street, or that the existing name of any city street should be changed, the legislative body may adopt a resolution designating a name for, or change the name of, such street.*"

A portion of Avenue Q-6 is being considered for renaming from Sierra Highway to 10th Street East. There are approximately fifteen (15) addresses, some vacant properties along Avenue Q-6, all within the City of Palmdale boundaries. Public Works will notify the United States Postal Service of the change, businesses, and residents that the renaming will affect. Public Works Maintenance staff will provide and install the revised street name signs.

FISCAL IMPACT

The estimated cost for replacing the existing street signs is approximately $5,000, including labor, materials, staff time, and coordination with the United States Postal Service. Funds are budgeted in Account No. 20733001-738410.

STRATEGIC PLAN

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

A. Support opportunities to celebrate rich traditions and diverse cultures in the community.

Prepared by:	Lynn Glidden, P.E., Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

1. Resolution No. CC 2023-059
2. Site Map Location of Avenue Q-6

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-059

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING THE RENAMING OF AVENUE Q-6 TO HAMMACK AVENUE (AVENUE Q-6) FROM SIERRA HIGHWAY TO 10TH STREET EAST.

WHEREAS, a street known as Avenue Q-6, extending from Sierra Highway to 10th Street East; and

WHEREAS, it is desirable and appropriate to change the name of Avenue Q-6 to Hammack Avenue (Avenue Q-6); and

WHEREAS, the City conferred with the family and Los Angeles County Sheriff's Department and support the street name change honoring the late Richard B. Hammack, former Los Angeles County Sherrif's Deputy.

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The portion of the City street now known as "Avenue Q-6" between Sierra Highway and 10th Street East shall henceforth be designated as "Hammack Avenue (Avenue Q-6)".

SECTION 2. This Resolution shall be effective upon its adoption.

SECTION 3. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED and **ADOPTED** this _____ day of _____, _____.

_____
Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

_____
William P. Curley, III
City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of the City of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the _____ day of _____, 20___ by the following roll call vote:

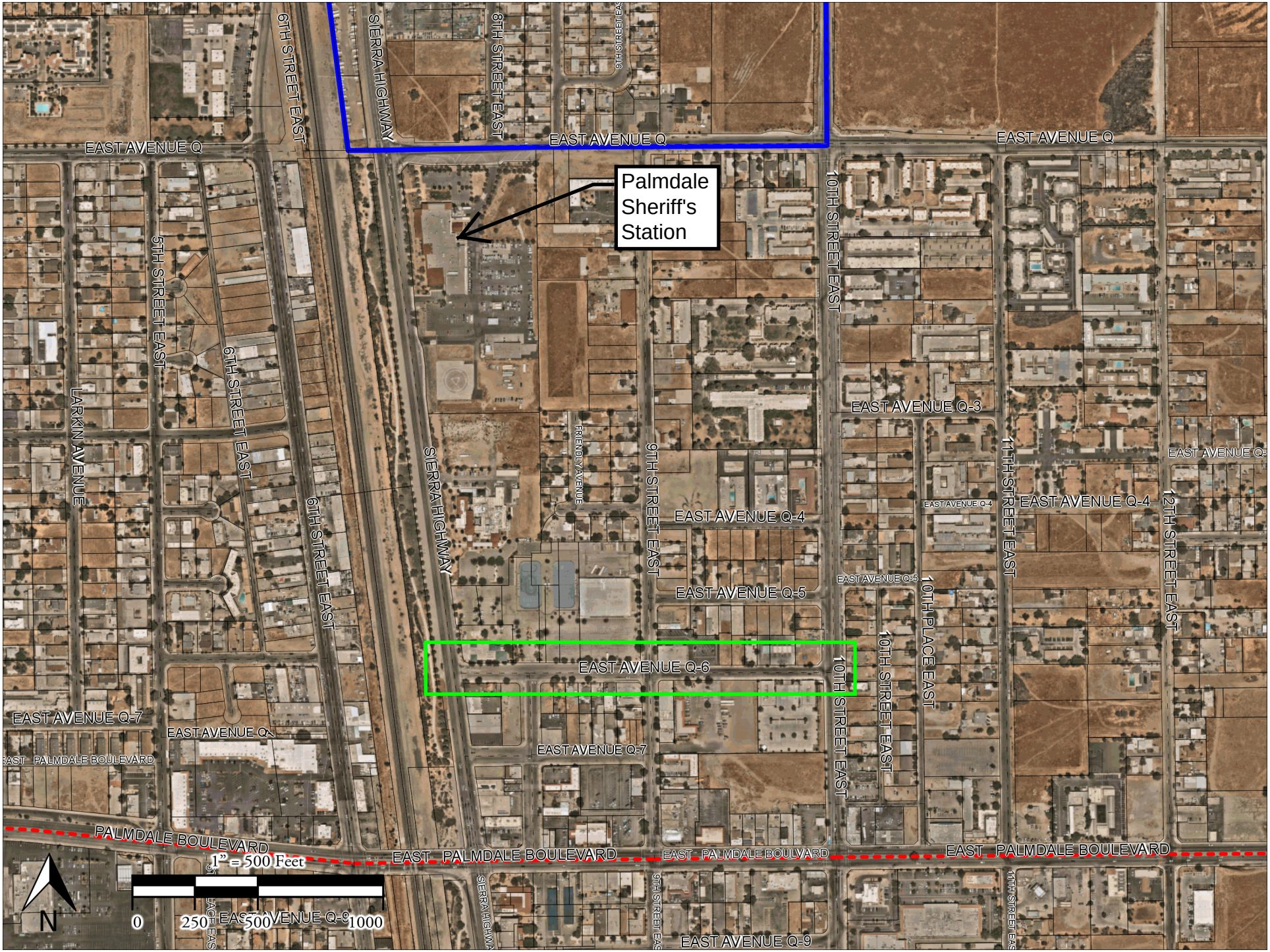
AYES: _____

NOES:_____

ABSTAIN:_____ABSENT:_____

Date: _____ _____
Rochelle Scott, Acting City Clerk

Hammack Avenue (Avenue Q-6)



THE CITY OF PALMDALE ASSUMES NO LIABILITY FOR DAMAGES THAT MAY ARISE FROM THE USE OF INFORMATION RETRIEVED FROM THIS MAP.

MINUTES
CITY COUNCIL/SA/PFA
CITY HALL COUNCIL CHAMBER
38300 SIERRA HIGHWAY, SUITE B
PALMDALE, CALIFORNIA
NOVEMBER 1, 2023

www.cityofpalmdale.org

1) CALL MEETING TO ORDER

Mayor Bettencourt called the meeting to order at 5:03 pm.

*Note: All City Council memberships are reflected in their City Council titles.

2) ROLL CALL MAYOR BETTENCOURT, MAYOR PRO TEM ALARCÓN, COUNCILMEMBERS BISHOP, LOA, OHLSEN

PRESENT: Laura Bettencourt, Andrea Alarcón, Austin Bishop, Richard J. Loa, Eric Ohlsen.
ABSENT: None.

Councilmember Loa participated via Zoom.

3) PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

4) PRESENTATIONS

4.1) Deputy City Manager Lopez displayed the videos for the first, second, and third place winners of the #FightFentanylAV 2023 Youth Challenge Awardees. Certificates of Recognition were provided to the awardees.

4.2) IT Manager Thompson spoke regarding the MISAC Award of Achievement that was presented to City of Palmdale Information Technology Division for their practices that have met or surpassed local government standards.

4.3) Palmdale Parks and Recreation Master Plan Findings.

Director of Parks and Recreation Smith spoke regarding the Master Plan and the prioritization of ideas and strategies to create the best park system. Ms. Smith introduced Tom Diehl and Pat O'Toole from Berry Dunn. Mr. Diehl provided a brief presentation on the methods used for public outreach and the feedback received from the community.

There was Council discussion regarding public outreach, improvement of current parks, expansion of park space, and location of parks and acreage.

The following individuals provided public comments: Mario Presents and Marsha Furman.

Mayor Bettencourt closed the Public Comments.

5) PUBLIC COMMENTS:

Mayor Bettencourt called for Public Comments.

Mayor Pro Tem Alarcón requested that items 6.5, 6.6 and 6.9 be pulled for discussion.

The following individuals discussed Item 6.9: Eugene Hernandez, Xavier Flores, Marcos Alvarez, and Rich Gallego.

Mayor Bettencourt closed the Public Comments.

6) CONSENT CALENDAR

6.1) Waive full reading of the Resolution(s) and/or Ordinance(s) to be considered and voted on at this meeting. (This permits reading the title only in lieu of reciting the entire text.)

6.2) Receive and file the monthly and quarterly investment activity reports for September 2023.

6.3) Adopt Resolution No. CC 2023-073, a Resolution of the City Council of the City of Palmdale to transfer unclaimed checks from their respective funds to the general fund pursuant to California Government Code Section 50050-50057.

6.4) Approve agreement with TruePoint Solutions, LLC to provide long-term support services for Accela, a land use, plan review, permitting, and inspection tracking system for a not-to-exceed amount of $396,000 for a term of three (3) years with the option to extend by two additional terms of one (1) year each.

6.5) Approve cooperative agreement with the County of Los Angeles, for PN 847A, Arterial Road Rehabilitation Project, for $1,300,000.

Mayor Pro Tem Alarcón pulled Items 6.5 and 6.6 to highlight the work that's coming.

Deputy Director of Public Works Hashemian presented the staff report for items 6.5 and 6.6.

Motion: Approve cooperative agreement with the County of Los Angeles, for PN 847A, Arterial Road Rehabilitation Project, for $1,300,000.
Moved by Andrea Alarcón, seconded by Austin Bishop.

Vote: Motion carried (5-0)
Yes: Laura Bettencourt, Andrea Alarcón, Austin Bishop, Richard J. Loa, Eric Ohlsen.

6.6) Approve cooperative agreement with County of Los Angeles for PN 869, Arterial Road Rehabilitation Project, for $850,000.

Motion: Approve cooperative agreement with County of Los Angeles for PN 869, Arterial Road Rehabilitation Project, for $850,000.
Moved by Andrea Alarcón, seconded by Austin Bishop.

Vote: Motion carried (5-0)
Yes: Laura Bettencourt, Andrea Alarcón, Austin Bishop, Richard J. Loa, Eric Ohlsen.

6.7) Approve first amendment with U.S. National Corp dba Jimenez Painting Company to increase contract price by $840,000 in an amount not to exceed $1,240,000 for the remainder of the contract term through June 2027.

6.8) Approve Final Parcel Map No. 83940 (located at Rancho Vista Blvd & Town Center Drive).

6.9) Approve contract for legal services with Harper & Burns, LLP, including William P. Curley III, appointed as City Attorney.

Mayor Pro Tem Alarcón pulled this item for discussion.

Councilmember Loa spoke in favor of approving the contract.

Motion: Approve contract for legal services with Harper & Burns, LLP, including William P. Curley III, appointed as City Attorney.
Moved by Richard J. Loa, seconded by Laura Bettencourt.

Vote: Motion carried (4-1)
Yes: Laura Bettencourt, Austin Bishop, Richard J. Loa, Eric Ohlsen.
No: Andrea Alarcón.

6.10) Approve the minutes from the previous meetings.

CC - October 18, 2023

Motion: Approve all items listed on the Consent Calendar except 6.5, 6.6, and 6.9.
Moved by Andrea Alarcón, seconded by Austin Bishop.

Vote: Motion carried (5-0)
Yes: Laura Bettencourt, Andrea Alarcón, Austin Bishop, Eric Ohlsen, Richard J. Loa.

7) JOINT PUBLIC HEARING - CITY COUNCIL/PALMDALE FINANCING AUTHORITY

7.1) Adopt Resolution No. CC 2023-064, a Resolution of the City Council of the City of Palmdale approving proceedings by the Palmdale Financing Authority for the issuance and sale of its Palmdale Financing Authority (Los Angeles County, California) Lease Revenue Bonds to finance the acquisition of certain real property and to refinance certain outstanding obligations, approving the form and authorizing execution of related documents and approving related actions; and Adopt Resolution No. PFA 2023-002, a Resolution of the Board of

Directors of the Palmdale Financing Authority authorizing the issuance and sale of its Palmdale Financing Authority (Los Angeles County, California) Lease Revenue Bonds to finance the acquisition of certain real property and to refinance certain outstanding obligations, approving the form and authorizing execution of related documents and approving related official actions.

Director of Finance Samson provided a detailed PowerPoint presentation.

Suzanne Harrell, Harrell & Company Advisor, displayed a slide that showed the breakdown between the tax-exempt and taxable bonds proposed to be issued and explained the difference between the two types of bonds. She

further explained the bond structure, interest rates, and debt service allocation.

The following individual provided public input: Marsha Furman.

There was Council and staff discussion regarding the use of Measure AV funds and a possible cap on the use of Measure AV funds. City Manager Perez stated during the fiscal budget adoption, the Council can restrict the use of Measure AV funds.

Motion: Adopt Resolution No. CC 2023-064 and PFA 2023-002.
Moved by Eric Ohlsen, seconded by Austin Bishop.

Vote: Motion carried (5-0)
Yes: Laura Bettencourt, Andrea Alarcón, Austin Bishop, Eric Ohlsen, Richard J. Loa.

8) NON-AGENDA PUBLIC COMMENTS:

Eugene Hernandez discussed the 10th St./Palmdale Boulevard clean-up and improvements to Avenue R; Jess Enos, Rich Gallego, Diane, Mario Presents, Mark, and citizen (no name provided) commented regarding Mayor Pro Tem Alarcón; Yul Gevargis requested informal townhall meetings with Council, suggested naming Desert Sands Park and part of Sierra Highway after Ryan Clinkunbroomer, and commented on graffiti; Carol Ross discussed the Kaleidoscope event, graffiti, illegal dumping, and townhall meetings with constituents; Daniel Chevez, AV student, discussed roads on Avenue R and 20th St. East, street racing in Palmdale, and City policies/initiatives; Vicky Ventura thanked the City for the Measure AV grant funds received for the Ventura Foundation; Director of AV Hispanic Chamber spoke on behalf of Core Center for Orthopedics and Rehabilitation regarding a homeless encampment; Ashley Cortes commented on the Wellbeing Lab; Marissa Perdoma and Ms. Alvarez commented regarding the Ventura Foundation leadership program; Xavier Flores, Marcos Alvarez, Karla discussed the presentation by Dr. Sharon O'Hara, U.C. Berkeley, on alcohol density; Marsha Furman discussed Veterans Day in the City of Palmdale; Mario Presents discussed the election process; and Viviana Vargas thanked Council for support with the Ventura Foundation leadership project and advocated for more funds.

Mayor Bettencourt closed the Public Comments.

Mayor Pro Tem Alarcón spoke regarding misinformation that was presented during public comments and First Amendment rights.

9) INFORMATIONAL REPORT FROM MAYOR AND / OR COUNCILMEMBERS ON THEIR VARIOUS COMMITTEE MEMBERSHIPS AND MEETINGS ATTENDED AT PUBLIC EXPENSE

9.1) Council Reports on Committee Memberships and Meetings Attended at Public Expense.

10) CITY COUNCIL ANNOUNCEMENTS AND REQUESTS

Councilmember Bishop announced Trunk or Treat was very well attended.

11) CITY MANAGER'S REPORT

City Manager Perez reported on the following: Master Plan Survey Results; I Lead Palmdale Youth Conference on November 4; Heart & Stroke Walk November 4 at Marie Kerr Park; AV Hispanic Chambers Dia De Los Muertos Fiesta on November 5 at Poncitlan Square; Johnny Gamboa Concert on November 5 at the Palmdale Playhouse; Neighborhood Watch Virtual Presentation on November 6 and 14; Great Food Rescue Documentary on November 9 at the Palmdale Playhouse; Musical Road unveiling and Marine Corps Birthday special events on November 10; Patriotic Pulse of Palmdale Blood Drive on November 10 at Poncitlan Square; Veterans Day Ceremony on November 11; A Million Thanks on November 11 at Domenic Massari and Marie Kerr Park; Reveal of the Palmdale Library Plein Air Murals on November 13; Park Connect meeting at McAdam Park on November 14; and the City was awarded a grant for almost eight-hundred thousand dollars from the California Department of Justice Tobacco Grant Program.

12) ADJOURN

Mayor Bettencourt adjourned the meeting at 7:30 pm to November 15, 2023, at 5:00 pm in the City Hall Council Chamber located at 38300 Sierra Highway, Suite B, Palmdale, California.

PASSED, APPROVED, and ADOPTED this 15th day of November 2023.

_____
Laura Bettencourt, Mayor

ATTEST:

_____
Rochelle Scott, Acting City Clerk

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **CITY MANAGER DEPARTMENT**
CITY CLERK DIVISION

DISTRICT: **ALL**

SUBJECT: **CITY COUNCIL NOMINATION AND APPOINTMENT OF ONE (1) MEMBER TO THE PALMDALE TOURISM IMPROVEMENT DISTRICT BOARD**

ISSUE

City Council Nomination and Appointment of one (1) Member to the Palmdale Tourism Improvement District Board.

RECOMMENDATION

Staff recommends that the City Council nominate and appoint one (1) member to serve on the Palmdale Tourism Improvement District Board for the remainder of a term to expire October 2024. The applicants are:

1. Sandra Stapleton (D2)
2. Lura Beaumont (Outside District Boundaries)

BACKGROUND

The Palmdale Tourism Improvement District (TID) was developed by local hoteliers and the City of Palmdale to promote Palmdale tourism and improve the tourism business environment through the development and operation of the TID. The Board consists of seven (7) Directors; four (4) representatives from the hotels that pay into the TID assessment; one (1) City Council member, one (1) City staff person, and one (1) public member, which may be a representative of a non-lodging hospitality or tourism sector in the City. The City Council member, staff person, and public member are appointed by the City Council. Directors serve a three-year term and receive no compensation or reimbursement.

DISCUSSION

Due to a vacancy on the Palmdale Tourism Improvement District Board, the City Clerk's office was asked to begin recruitment to fill the vacancy. A recruitment advertisement was placed in the AV Press and AV Press online. The ad, along with the application, was also made available on the Palmdale Tourism Improvement District webpage. The City Clerk's Office received two (2) qualified applications.

FISCAL IMPACT

Approximately $2,562 in advertising costs were budgeted in account 10112001-722310. Palmdale Tourism Improvement District Board members receive no compensation and are not eligible for reimbursement.

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

C. Involve and expand engagement to enhance public oversight and transparency.

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community.

Prepared by:	Roxanne Faber, Acting City Clerk
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

Redacted Applications

PALMDALE

a place to call home

Office of the City Clerk
38300 Sierra Highway, Suite C
Palmdale, CA 93550
(661) 267-5151

Palmdale Tourism Improvement District Board
Volunteer Application

The City of Palmdale is an equal opportunity employer and does not discriminate in hiring or employment upon any basis prohibited by law, including race, color, creed, religion, age, sex (including pregnancy, childbirth and related medical conditions), cancer, national origin, genetic characteristics, genetic information, ancestry, sexual orientation, gender, gender identity, gender expression, marital status, veteran status, disability, or any other basis protected by applicable law. None of the questions or information sought in this application are intended to discriminate based upon any status protected by law. If you need reasonable accommodation in completing this application, or in any other part of the application process, please contact the City Clerk's Office at 661/267-5151.

Palmdale Tourism Improvement District Board Information:

Please Print or Type

Name: SANDRA F. STAPLETON

Address: [redacted]

City: PALMDALE Zip Code: CA Home Phone: [redacted]

Occupation: Chief, Business Integration, Air Force Plant 42 Bus. Phone: [redacted]

Are you currently serving as an elected city or county official? If yes, please explain. If no, type N/A?

N/A.

Do you or any members of your immediate family own any interest in any enterprise which does or might do business with the City and/or the Board/Commission?

Yes ☐ No ☑

Do you or any members of your immediate family have any interests or associations which might present a conflict of interest?

Yes ☐ No ☑

List below three persons not related to you who have knowledge of your civic activity within the last three years. Provide their name, address, occupation, telephone number, email address and number of years acquainted.?

Name: Dawn Ackerman
Address: [redacted]
No. Street City State Zip
Occupation: Chief, Business Integration, Air Force Plant 42
Telephone No. ([redacted]) [redacted] Number of Years Acquainted: 12

Name: Vickie Zenker
Address: [redacted]
No. Street City State Zip
Occupation: Team Leader Kellar-Williams Realty
Telephone No. ([redacted]) [redacted] Number of Years Acquainted: 22

Name: Deborah Gold
Address: [redacted]
No. Street City State Zip
Occupation Ph.d Therapist/Clinical Psychologist, Author, Executive Director of UCAN (Retired)
Telephone No. ([redacted]) [redacted] Number of Years Acquainted: 22

List all current organizations and societies of which you are a member?

Senior Pastor, The Oasis Life Center, 44231 Division Street, Lancaster, CA 93535

Please describe any public service experience serving on a commission or public body.

None.

Why do you want to serve on the Palmdale Tourism Improvement District?

I have been serving my community on a volunteer basis since 1996. I have a heart to serve people with whatever skills, talents, assistance and resources that I have to offer. I have been working with some of the current PTID members in my job duties as the Chief of Business Integration at Air Force Plant 42; our focus has been related to current and potential community partnership efforts to benefit Veterans as well as working together for collaboration opportunities. I have lived in this community for 34 years, and I hope to have the honor to contribute towards showcasing the awesome City of Palmdale.

Volunteer Information:

REASONABLE ACCOMMODATIONS: Based on your understanding of the Volunteer Program, will you require any special accommodations to apply and/or participate as a volunteer? ☐ Yes ☐ No

If yes, what reasonable accommodations would be necessary to assist you in this area?

None. (Note: If the No box above is clicked, it unchecks the No box for the following question above: Do you or any members of your immediate family have any interests or associations which might present a conflict of interest? And vice versa.)

Foreign Languages: SPANISH ☑ Speak ☑ Read ☑ Write

AMERICAN SIGN LANGUAGE ☑ Speak ☑ Read ☐ Write

Specialized training/skills: USAF EMERGENCY OPERATIONS CENTER DIRECTOR

Computer Skills:

☑ Word ☐ Photoshop ☑ Excel ☐ Adobe Creator

☑ Access ☑ PowerPoint ☑ Publisher ☐ Other:

Is any or all of your volunteer time to be credited toward a project, certification or degree program for a school, community organization or religious program? ☐ No ☐ Yes, please list

No.

Previous Volunteer/ Work Experience as it relates to your volunteer interests:

May 2022 - International Test & Evaluation Workshop Speaker, Las Vegas, NV
Dec 2021 - Innovation and Strategy Course, Harvard University, Cambridge, Massachusetts
Oct 2021 - Leading Strategy Execution Through Culture, UC Berkeley Executive Education, Haas School of Business, Berkeley, CA
Feb 2018 - American Association of Airport Executives, Industrial Aviation & Military Operations, Seattle, WA
May 2013 - Graduated AV Community Sheriff's Academy, Volunteer Sheriff's Chaplain
2001-2018 - United Community Action Network (UCAN), Youth Counselor for Troubled Teens, Lancaster, CA
1993-2007 - Computer Sciences Corporation/JT3 Contractor at Edwards AFB, Manager, B-2 Stealth Bomber Flight Test Program
Jan 1989-Jan 1993 - Active Duty United States Air Force Military Service, Administrative Specialist

In Case of Emergency:

Whom should we notify?

[redacted] [redacted]

Name Relationship to Applicant

Home Phone: [redacted] Work Phone: [redacted]

Physician's Name: [redacted] Phone: [redacted]

Do you have any medical history that we should be aware of in the event of an emergency? (Allergies, medications, etc.)

NONE.

AUTHORIZATION AND RELEASE

I certify that all statements on this application are true and complete to the best of my knowledge. I hereby authorize the City of Palmdale to investigate any information contained in this application. I understand that as part of the final selection process I will be required to pass a Livescan fingerprint scan submission via the California Department of Justice. I understand that information collected during this background check will be limited to that appropriate to determining my suitability for particular types of volunteer work and that such information collected during the check will be kept confidential. I understand that false or misleading statements shall be sufficient grounds for disqualification from the City's Volunteer Program. Further, I understand that as a volunteer, I am offering my services of my own free will without any

expectation of compensation, benefits, or insurance of any kind (unless otherwise noted).

I voluntarily agree to participate in this program. I hereby waive, release, and hold harmless from any liability or claims for damages for personal injury, including death, as well as from claims for property damage which may arise in connection with the above-named activity, against the supervisor, the City of Palmdale and its elected and appointed officials, agents, and employees.

I hereby agree to the Authorization and Release set forth on this 18TH day of OCTOBER, 2023

Applicant's Name	Applicant's Signature
SANDRA F. STAPLETON	STAPLETON.SANDRA.F.1095569265 Digitally signed by STAPLETON.SANDRA.F.1095569265 Date: 2023.10.18 18:03:17 -07'00'

Applicants are encouraged to attach a resume.

Please return the completed application to the City Clerk, 38300 Sierra Highway, Suite C, Palmdale, CA 93550. For additional information, you may call (661) 267-5151.

From: noreply@civicplus.com
To: City Clerk Department
Subject: Online Form Submittal: Palmdale Tourism Improvement District Board Volunteer Application
Date: Wednesday, September 6, 2023 10:14:01 PM

CAUTION: This email originated from outside of the organization.

Palmdale Tourism Improvement District Board Volunteer Application

The City of Palmdale is an equal opportunity employer and does not discriminate in hiring or employment upon any basis prohibited by law, including race, color, creed, religion, age, sex (including pregnancy, childbirth, and related medical conditions), cancer, national origin, genetic characteristics, genetic information, ancestry, sexual orientation, gender, gender identity, gender expression, marital status, veteran status, disability, or any other basis protected by applicable law. None of the questions or information sought in this application are intended to discriminate based upon any status protected by law. If you need reasonable accommodation in completing this application, or in any other part of the application process, please get in touch with the City Clerk's Office at 661/267-5151.

Palmdale Tourism Improvement District Board Information	
First Name	Lura
Last Name	Beaumont
Address	[redacted]
City	Lancaster
Zip Code	93534
Home Phone	[redacted]
Occupation	Marketing Consultant
Business Phone	[redacted]
Are you currently serving as an elected city or county official? If yes, please explain. If no, type N/A?	N/A

Do you or any members of your immediate family own any interest in any enterprise which does or might do business with the City and/or the Board/Commission?	No
Do you or any members of your immediate family have any interests or associations which might present a conflict of interest?	No

(Section Break)

References

List below three persons not related to you who have knowledge of your civic activity within the last three years. Provide their name, address, occupation, telephone number, email address and number of years acquainted.

1.

First Name	ROXIE
Last Name	PATTERSON
Address	[redacted]
City	[redacted]
State	[redacted]
Zip Code	[redacted]
Occupation	Vice President of Membership, AV UUF
Email	[redacted]
Phone Number	[redacted]
Number of Years Aquainted	1

2.

First Name	Louis

Last Name	Alloro
Address	[redacted]
City	[redacted]
State	Ca
Zip Code	[redacted]
Occupation	Principal Leadership Coach & Facilitator, The Wellbeing Lab
Email	[redacted]
Phone Number	[redacted]
Number of Years Acquainted	.5 years
3.	
First Name	Cedric
Last Name	White
Address	[redacted]
City	[redacted]
State	Ca
Zip Code	[redacted]
Occupation	President, ANTELOPE VALLEY COMMUNITY UPLIFT FOUNDATION
Email	[redacted]
Phone Number	[redacted]
Number of Years Acquainted	.5 years
List all current organizations and societies of which you are a member?	·Antelope Valley Unitarian Universalist Fellowship, AVUUF ·Antelope Valley Wellbeing Coalition ·The Outreach Center Antelope Valley
Please describe any public service	None as of now.

experience serving on a commission or public body.	
Why do you want to serve on the Palmdale Tourism Improvement District?	From overcoming the devastating aftermath of domestic violence, I've embarked on a transformative journey to reclaim my life. My three-year educational path in Social Work at Cal State University Bakersfield, in collaboration with Antelope Valley University, reflects my commitment to helping others facing similar challenges. With an estimated completion in 2027, I'm preparing to contribute to community wellbeing, driven by the belief that my experiences can make a difference.
(Section Break)	
Volunteer Information	
REASONABLE ACCOMMODATIONS	No
Foreign Languages	
Foreign Language	None
Check all that apply	*Field not completed.*
Foreign Language	None
Check all that apply	*Field not completed.*
Specialized training/skills	•Certificate in Applied Positive Psychology (CAPP) December, 2023 •Non-Violent Communication (NVC) •Conflict Resolution •Project Coordination and Event Planning •Volunteer Coordination & Training •Data Collection & Management •Website & Social Media Management •Copy Writing & Asset Creation •Creative & Critical Thinking •General Office Administration •Proficient in Technologies & Applications .
Computer Skills	Word, Photoshop, Excel, Adobe Creator, Access, PowerPoint, Publisher, Other
Is any or all of your volunteer time to be credited toward a project, certification or	No

degree program for a school, community organization or religious program?	
Previous Volunteer/ Work Experience as it relates to your volunteer interests	San Francisco, Bay Area , and remote destinations, 2001-2010 Overview & Scope: Volunteer Community Collaborawas a way of life as we built consensus around operations, goals, projects, funding as well as equipment and space, shared resources and spaces, cross over skills/functions with aligned/overlapping communities with values and goals. Organizations & Institution: •The Rhythm Society 501(3)c, Rhythm.org •Friends & Family 501(3)c, FNF.org •False Profit, LLC, False-Profit.com • Responsibilities,: Voting Member, Volunteer, Team Leader .

(Section Break)

In Case of Emergency
Whom should we notify?

Name	[redacted]
Relationship to Applicant	[redacted]
Home Phone	[redacted]
Work Phone	[redacted]
Physician's Name	[redacted]
Physician's Phone	[redacted]
Do you have any medical history that we should be aware of in the event of an emergency?	N/A

AUTHORIZATION AND RELEASE

I certify that all statements on this application are true and complete to the best of my knowledge. I hereby authorize the City of Palmdale to investigate any information contained in this application. I understand that as part of the final selection process I will be required to pass a Livescan fingerprint scan submission via the California Department of Justice. I understand that information collected

during this background check will be limited to that appropriate to determining my suitability for particular types of volunteer work and that such information collected during the check will be kept confidential. I understand that false or misleading statements shall be sufficient grounds for disqualification from the City's Volunteer Program. Further, I understand that as a volunteer, I am offering my services of my own free will without any expectation of compensation, benefits, or insurance of any kind (unless otherwise noted).

I voluntarily agree to participate in this program. I hereby waive, release, and hold harmless from any liability or claims for damages for personal injury, including death, as well as from claims for property damage which may arise in connection with the above-named activity, against the supervisor, the City of Palmdale and its elected and appointed officials, agents, and employees.

I hereby agree to the Authorization and Release set forth on this day.	9/6/2023
Electronic Signature Agreement	I agree.
Electronic Signature	Lura Beaumont

Applicants are encouraged to attach a resume.
Please return the completed application to the City Clerk, 38300 Sierra Highway, Suite C, Palmdale, CA 93550. For additional information, you may call (661) 267-5151.

Email not displaying correctly? View it in your browser.

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC SAFETY DEPARTMENT AND ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT**

DISTRICT: **ALL**

SUBJECT **ADOPT ORDINANCE NO. 1612, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING VARIOUS AMENDMENTS TO THE PALMDALE MUNICIPAL CODE**

ISSUE

Introduction and adoption of Ordinance No. 1612, approving various amendments to the Palmdale Municipal Code (PMC).

RECOMMENDATION

Staff recommends that the City Council:

1. Receive public testimony regarding Ordinance No. 1612; and

2. Adopt Ordinance No. 1612 recommending City Council approval of various amendments to the PMC.

BACKGROUND

On September 21, 2022, Palmdale 2045 was adopted by the City Council and replaced the previously adopted General Plan (1993). State law requires that the regulations governing the use and development of lands within the municipal limits of a city be consistent with the adopted General Plan for that city.

ZOA 21-007 was adopted by the City Council on March 15, 2023, which amended Title 17 of the PMC to implement the vision of Palmdale 2045, as well as support new land use patterns and future development.

Ordinance No. 1614 was adopted by the City Council on August 16, 2023, which included various amendments to the PMC except for Title 5 Business Licenses, Tax and Regulation. Ordinance No. 1612 will update and consolidate Title 5 by streamlining processes related to enforcement provisions, business licensing, and related nuisances and nuisance abatement. This ordinance will ensure that the PMC complies with the most recent State and Federal law. Ordinance No. 1612 also includes amendments to other sections of the PMC to ensure consistency with the Title 5 updates.

DISCUSSION

The proposed amendments to the PMC impact Title 1 General Provisions, Title 3 Revenue and Finance, Title 5 Business Licenses, Taxes and Regulations, Title 8 Health and Safety, and Title 9 Public Peace, Morals and Welfare as follows:

Title 1 General Provisions

The proposed amendments to Title 1 include authorizing Peace Officers to make arrests for violations of the PMC in accordance with State law and streamlining the penalty provisions to hold persons responsible for violations concerning public health, safety, and welfare and apply all enforcement tools available to the City prescribed under Title 1.

Title 3 Revenue and Finance and Title 5 Business Licenses, Taxes and Regulations

The proposed amendments include updating definitions related to adult-oriented businesses and tobacco retail establishments; streamlining regulatory procedures for denial, revocation, and suspension of business licenses and permit procedures, streamline appeal procedures for business licenses and permits across PMC Chapters 3.44 (Business License Tax) and 5.04 (Business Regulation); and, remove the following businesses from City special permitting requirements given either their outdated nature or State law which include: ambulances, billiards, bingo, carnivals, dance halls and dances, introductory services, fortunetelling, health club, house and street numbering, hypnotist, locksmith, motion picture theater, private patrol family entertainment purposes, taxicabs and taxicab drivers, and tow trucks.

Title 8 Health and Safety

The proposed amendments to Title 8 include expanding the definition and abatement procedures of inoperable vehicles and updating the City's rental unit inspection program by requiring rental property owners to coordinate more effectively with the Building and Safety Division.

Title 9 Public Peace, Morals and Welfare

The proposed amendments to Title 9 include prohibitions on public urination and defecation in public places, harassment of City staff, and regulations on aggressive panhandling.

The proposed amendments provide greater efficiency and authority for the City code enforcement efforts related to nuisance abatement, enhanced transparency, clarity, and ease of reference for expanded and new prohibitions designed to improve public peace, health, sanitation, and welfare.

FISCAL IMPACT

None.

STRATEGIC PLAN

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community.

Prepared by:	Brenda Magaña, Planning Manager Mario Vallarta, Acting Community Compliance Manager
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENT

1. Ordinance No. 1612

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
ORDINANCE NO. 1612

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING VARIOUS AMENDMENTS TO THE PALMDALE MUNICIPAL CODE

WHEREAS Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

WHEREAS, the City Council finds it necessary to update, consolidate, and streamline the Palmdale Municipal Code ("PMC") periodically to achieve more efficient enforcement of code violations to promote public health, safety, and welfare;

WHEREAS, the City Council finds it necessary to expand authority to enforce and issue citations to include peace officers;

WHEREAS, the City Council finds it necessary to update select provisions relating to the City's rental unit inspection program to ensure timely inspections of rental properties for the welfare of occupants and the community;

WHEREAS, the City Council finds it necessary to clarify the responsible parties for violations of health, safety, and technical construction codes adopted by the City, including firework regulations, to provide for consistent enforcement methods and abatement tools in the City;

WHEREAS, the City Council finds it necessary to update, streamline, and enhance efficiency and clarity in its business permitting and business licensing appeals processes, including the procedures available to the public for denial, revocation, and suspension of such approvals;

WHEREAS, the City Council finds it necessary to remove outdated business licensing requirements for certain industries, including ambulances, billiards, bingo, carnivals, dance halls and dances, introductory services, fortunetelling, health clubs, house and street numbering, hypnotism, locksmiths, motion picture theaters, private patrol, family entertainment purposes, taxicabs and drivers, and tow trucks, where there is no longer any such businesses in the City and/or significant concerns related to such businesses compared to when the original codes enacting such regulations were created, and relatedly, to streamline the code to account for these removals;

WHEREAS, the City Council finds it necessary to define and expand on prohibitions effecting public peace, health, sanitation, and welfare and related penalties such as aggressive panhandling by imposing reasonable restrictions on aggressive, intrusive, or unsafe panhandling while respecting the constitutional rights of free speech

for all citizens, public urination and defecation, fighting on public property, causing nuisances while under the influence, public consumption of alcohol or possession of open containers in areas not otherwise approved for such purposes, and engaging in annoying and harassing contact with City staff; and

WHEREAS, said amendments, adoptions, and/or deletions of the Palmdale Municipal Code are permitted by law, including the California Constitution, Government Code, and Civil Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALMDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: The above recitals are true and correct and are incorporated herein.

SECTION 2: Section 1.16.010 of Title 1 of the Palmdale Municipal Code is hereby amended to read as follows:

(A) The Senior Code Enforcement Officer, Code Enforcement Officer, Community Service Officer, Building Official, Supervising Building Inspector, Senior Building Inspector, Building Inspector, City Engineer, Supervising Public Works Inspector, Peace Officer, Parking Enforcement Supervisor, Parking Enforcement Officer, Public Security Officer, Senior Public Security Officer and Supervising Public Security Officer classifications of employees of the City as may hereafter be specifically designated by ordinance shall have the power, authority and immunity, as set forth in Section 836.5 of the California Penal Code, to make arrests without a warrant whenever such officers or employees have reasonable cause to believe that the person to be arrested has committed a violation in their presence of an ordinance or statute which such officers or employees have the duty to enforce.

SECTION 3: Section 3.44.140 of Title 3 of the Palmdale Municipal Code is hereby amended to read as follows:

3.44.140 Denial, revocation, suspension of business license; procedures to contest and effect.

(A) Grounds for Denial, Revocation, Suspension

(1) Grounds for Denial; Business Activities Involving First Amendment Activities. Neither the Director of Finance or designee nor the City Council shall approve an application for a business license for a business activity primarily involving First Amendment activities if any of the following findings are made:

(a) The building, structure, premises, or the equipment used to conduct the business activity fails to comply with all applicable health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City or there are fees, fines, or other penalties owing the City in connection with

the business activity including the building, structure, premises, or the equipment used to conduct the business activity; provided, however, that this subsection shall not be construed to require that the applicant actually be in compliance with such laws or have paid such penalties at the time set for review and approval. The Director of Finance or designee nor the City Council or the City Council, as applicable, may approve a business permit and condition its operative date upon the later submission by the applicant to the Director of Finance or designee of a certificate of occupancy issued by the Division of Building and Safety or other satisfactory evidence that the business activity is then in compliance with all such applicable laws or proof of payment of such penalties;

(b) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for the business license or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(c) The business is prohibited by any local or state law, statute, rule or regulation, or is prohibited in the particular location or zone by any law, statute, rule, or regulation; or

(d) The Director of Finance or designee or the City Council City Council has made the findings and determination as specified in PMC Section 5.04.185 relating to an applicant for a license for a proposed business activity involving First Amendment activities.

(2) Grounds for Denial; Business Activities Not Involving First Amendment Activities. Neither the Director of Finance or designee nor the City Council shall approve an application for a business license for a business activity not primarily involving First Amendment activities if any of the following findings are made:

(a) The building, structure, premises, or the equipment used to conduct the business activity fails to comply with all applicable health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City or there are fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity; provided, however, that this subsection shall not be construed to require that the applicant actually be in compliance with such laws or have paid such penalties at the time set for review and approval. The Director of Finance or designee or the City Council, as applicable, may approve a business license and condition its operative date upon the later submission by the applicant to the Director of Finance or designee of a certificate of occupancy issued by the Division of Building and Safety or other satisfactory evidence that the business activity is then in compliance with all such applicable laws or proof of payment of such penalties;

(b) The applicant has knowingly made any false, misleading, or fraudulent statement of material fact in the application for the business license or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(c) The business is prohibited by any local or state law, statute, rule or regulation, or is prohibited in the particular location or zone by any law, statute, rule, or regulation;

(d) The City Council has made the findings and determination as specified in PMC 5.04.185 relating to an applicant for a license for a business activity not involving First Amendment activities.

(3) Grounds for Revocation or Suspension; Business Activities Involving First Amendment Activities. After the hearing, the City Council may condition, modify, suspend or revoke a business license for any business activity required to be permitted under this chapter if the City Council finds that one or more of the following conditions exist:

(a) That the business activity including the building, structure, premises or equipment used in the conduct of the business does not comply with any health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City;

(b) That the licensee, or any employee, agent or manager of the licensee, has violated any federal or state statute or any ordinance or regulation of the City in the course of exercising any rights under the business license which is being considered for revocation;

(c) That the licensee, or any employee, agent or manager of the licensee, has knowingly made any false, misleading or fraudulent statement of material fact in the application for permit, or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(d) That the licensee, or any employee, agent or manager of the licensee, has published, uttered or disseminated any false, deceptive or misleading statements or advertisements in connection with the licensed business;

(e) That the licensee has failed or refused to notify the Director of Finance or designee of any change in facts as required by this chapter within 10 days after such change;

(f) That the licensee, or any employee, agent or manager of the licensee, has violated any conditions or restrictions of the business license;

(g) That the licensee, or any employee, agent or manager of the licensee, has allowed, or failed to prevent, the use of the business as a base for unlawful or criminal activity, including, but not limited to, solicitation, prostitution or drug trafficking;

(h) That there are any fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity; or

(i) The licensee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law.

(4) Grounds for Revocation or Suspension; Business Activities Not Involving First Amendment Activities. After the hearing, the City Council may condition, modify, suspend or revoke a business license for any business activity required to be permitted under this chapter if the City Council finds that one or more of the following conditions exist:

(a) That the business activity including the building, structure, premises or equipment used in the conduct of the business does not comply with any health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City;

(b) That the licensee, or any employee, agent or manager of the licensee, has violated any federal or state statute or any ordinance of the City in the course of exercising any rights under the business license which is being considered for revocation;

(c) That the licensee, or any employee, agent or manager of the licensee, has been found to have committed a crime of moral turpitude which bears a substantial relationship to the conduct of the business activity for which the business license is being considered for revocation;

(d) That the licensee, or any employee, agent or manager of the licensee, has knowingly made any false, misleading or fraudulent statement of material fact in the application for permit, or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(e) That the licensee, or any employee, agent or manager of the licensee, has published, uttered or disseminated any false, deceptive or misleading statements or advertisements in connection with the operation of the licensed business;

(f) That the licensee has failed or refused to notify the Director or designee of any change in facts as required by this Chapter within 10 days after such change;

(g) That the licensee, or any employee, agent or manager of the licensee, has violated any conditions or restrictions of the business license;

(h) That the licensee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law;

(i) That the licensee, or any employee, agent or manager of the licensee, has violated any rule or regulation adopted by the City Council or any other governmental agency relating to the licensee's business;

(j) That the licensee has conducted the licensed business in a manner contrary to the public health, safety, and welfare; or

(k) That there are any fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity.

(B) Hearing to Contest Denial, Revocation, Suspension

(1) Initiation of Hearing. The determination of whether a license should be denied, revoked, or suspended shall be initiated by a written statement of the grounds in Section 3.44.140(A) have been found. Such statement may be initiated by any department or agency required to review or inspect the business activity for compliance with applicable regulations. Such statement shall be submitted to the Director of Finance or their designee. The City shall give written notice to the applicant/licensee of the decision to deny, revoke, or suspend to the address on the operative application or license via first-class mail. The applicant/licensee may request a hearing by filing a request for a hearing on a City-approved form with the Office of the City Clerk, 38300 Sierra Highway, Palmdale, CA 93550 and must provide the reasons why the grounds in Section 3.44.140(A) have not been established within 20 calendar days from the issuance date of the notice. If the Office of the City Clerk does not receive the request in the required period, the applicant/licensee shall have waived the right to a hearing and the determination shall be deemed confirmed and final.

(2) Notice of Hearing. If a timely and complete request for hearing is made, the City will set a hearing before the City Council for the City Council to determine whether grounds in Section 3.44.140(A) have been established to support the City's denial, revocation, or suspension. Written notice of the date, time, and location of the hearing shall be given to the applicant/licensee not less than 10

days prior to the hearing by first class mail. Service of this notice is deemed complete at time of mailing. The failure of an applicant/licensee to receive a properly addressed notice shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to this Section. The hearing will be conducted within 60 days of the date a timely and complete request is received by the Office of the City Clerk unless otherwise agreed to by the applicant/licensee and the City.

(3) Procedure for Hearing.

(a) Right to witnesses and submission of documentary evidence. The applicant/licensee and the City shall have the right to bring witnesses to testify whether the grounds in Section 3.44.140(A) have been established and cross-examine each other's witnesses. The applicant/licensee and the City also have the right to submit in advance of the hearing—no later than 3 calendar days prior to the date set for hearing—written argument and documentary evidence on whether the grounds in Section 3.44.140(A) have been established. Such submission shall be made by first class mail unless otherwise agreed to by the applicant/licensee and the City, such as via email. Failure to receive said written material shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to this Section.

(b) Procedure and rules of evidence. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Oral evidence shall be taken only on oath or affirmation. The City bears the burden of proof to establish the grounds in Section 3.44.140(A) by a preponderance of evidence. An applicant/licensee may bring an interpreter to the hearing provided there is no expense to the City therefore. The City Council may question any person who presents evidence or who testifies at any hearing. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing in accordance with PMC 2.08.090.

(c) Decision. The City Council shall issue its decision in writing promptly and notice of it must be made via first-class mail to the applicant/licensee and City. The decision shall contain a determination of the issues presented, including the evidence supporting whether the grounds in Section 3.44.140(A) were established and the applicable grounds in Section 3.44.140(A).

(4) Effect of Revocation or Suspension.

(a) No refunds of any business license fees, taxes, or other sums paid shall be made to any licensee upon revocation or suspension of a business license.

(b) Following revocation of any business license under this Section, no business license to conduct the same business activity shall be issued to the same person for a period of one year.

(c) Whenever a business license is suspended or revoked, the Director of Finance or their designee shall take into possession the business license for the subject business activity. The licensee shall surrender the business license and license stickers, or similar evidence of a license, to the Director of Finance or their designee.

(d) Upon revocation or suspension of a business license, the licensee shall immediately cease operation of the business activity. Except as otherwise provided, if the license is suspended, the licensee may resume operation upon expiration of the suspension period.

(5) Judicial Appeal. The determination issued by the City Council shall be deemed a final order and may be judicially reviewed pursuant to California Code of Civil Procedure Section 1094.6. There is no right to a further administrative appeal.

(C) No License Issued or Renewed where Applicant is Indebted to City

(1) No business license shall knowingly be issued or renewed when, at the time of making application for any license, or renewal thereof, the applicant is indebted to the City for any unpaid license tax, license fees, transient occupancy taxes, or unpaid invoices for any rates, fees or charges imposed pursuant to this code. The Director of Finance or designee may enter into an agreement with any person so indebted to the City to establish a payment schedule for such indebtedness and any delinquencies and interest thereon. In such agreement, the debtor shall acknowledge such debt to the City and shall agree that if any default occurs in the payment of any installment agreed to be paid thereunder, the entire amount to be paid shall become immediately due and payable, and that, if suit is brought to enforce collection of the amount agreed to be paid under such agreement, the debtor will pay all costs of suit incurred by the City, including reasonable attorneys' fees.

(2) If such an agreement is executed, and all other provisions of this Chapter are complied with, a license for the current or ensuing license period may be issued to such person upon payment of the license tax prescribed for the current or ensuing license period, together with any penalties thereon.

SECTION 4: Section 5.04.040 subdivision (N)(1) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

(1) Any business wherein the preponderant business is the offering of services, materials, goods and/or products which are characterized by an emphasis on matter depicting, describing, or in relation to "nude" or "semi-nude" persons or "specified sexual activities," as defined in Section 17.92.010 of the Palmdale zoning ordinance, for observation by

patrons therein. Such businesses shall include, but not be limited to, an adult bookstore, adult video store, picture arcade showing adult entertainment pictures, adult motion picture theater or other similar businesses; or

SECTION 5: Section 5.04.040 subdivision (N)(3) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

(3) Any business, having as a portion of its goods for sale, products which replicate or are designed to simulate "specified anatomical areas," as defined in Section 17.92.010 of the Palmdale zoning ordinance, to cause sexual excitement thereof. Such business shall include, but not be limited to, a sexual novelty store or other similar businesses.

SECTION 6: Section 5.04.050 subdivision (D) of Title 5 of the Palmdale Municipal Code is hereby repealed and deleted in its entirety; however such repeal shall not affect or excuse any violation of said Section that occurred prior to the effective date of this Ordinance, nor shall such repeal impede, deter, impact, or negate any administrative, civil, or criminal enforcement of any violation of said Section that occurred prior to the effective date of this Ordinance.

SECTION 7: Section 5.04.150 subdivisions (2), (3), (4), (5), (6), (8), (9), (11) through (27) of Title 5 of the Palmdale Municipal Code are hereby repealed and deleted in its entirety; however such repeal shall not affect or excuse any violation of said Section that occurred prior to the effective date of this Ordinance, nor shall such repeal impede, deter, impact, or negate any administrative, civil, or criminal enforcement of any violation of said Section that occurred prior to the effective date of this Ordinance.

SECTION 8: Section 5.04.150 of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

(A) No person shall commence, conduct or purport to commence or conduct the following business activities without a valid business permit:

(1) Adult-oriented businesses;
(2) Entertainment;
(3) Game arcades;
(4) Gun dealers;
(5) Massage establishments and massage technicians;
(6) Pawnbrokers and secondhand dealers;
(7) Sidewalk vending;
(8) Mobile vending; and
(9) Tobacco/smoking product retailer.

(B) The regulations pertaining to specified businesses or business activities requiring a business permit are set forth in Article II of this chapter commencing with PMC 5.04.400.

SECTION 9: Subsection (A)(1) of Section 5.04.170 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:

(1) Business Permit Applications Which Do Not Require Hearings. These business permit applications shall be subject to the approval of the Director as the reviewing authority. Any person may appeal the Director's decision on the application in a manner consistent with the requirements of PMC 5.04.280, et. sequentes. The timely filing of an appeal shall entitle the aggrieved party to a hearing.

SECTION 10: Subsection (B) of Section 5.04.210 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:
(B) Appealability. The denial of an application by the Director may be appealed to the City Council in a manner consistent with PMC 5.04.280, et. sequentes.

SECTION 11: Section 5.04.240 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:
Section 5.04.240 Reserved.

SECTION 12: Subsection (E) of Section 5.04.250 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:
(E) Denial of Permit Renewal. If the City has received notice of any of the following upon the filing of any permit renewal application, the application for renewal may be denied, subject to the permittee's right to appeal as provided for in PMC 5.04.280, et. sequentes.

SECTION 13: Section 5.04.270 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:

5.04.270 Denial, non-renewal, modification, suspension or revocation.

(A) The determination of whether a permit should be denied, not renewed, modified, suspended, or revoked shall be initiated by a written statement evidencing that the grounds in Section 5.02.200 or 5.04.310, as the case may be, have been found. Such statement may be initiated by any department or agency required to review or inspect the business permit and/or activity for compliance with applicable regulations. Such statement shall be submitted to the Director. The City shall give written notice to the applicant/permittee of the decision to deny, not renew, modify, suspend, or revoke to the address on the operative permit paperwork via first-class mail.
(B) Any applicant/permittee aggrieved by the City's denial of a business permit, non-renewal of a business permit, or the City's modifying, suspension or revocation of a business permit may challenge such decision pursuant to PMC 5.04.280 et seq.

SECTION 14: Section 5.04.280 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:

5.04.280 Hearing to contest modification, suspension or revocation – Initiation of hearing.

The applicant/permittee may request a hearing by filing a request for a hearing on a City-approved form with the Office of the City Clerk, 38300 Sierra Highway, Palmdale, CA 93550 and must provide the reasons why the grounds in Section 5.02.200 or 5.04.310, as the case may be, have not been established within 20 calendar days from the issuance date of the notice. If the Office of the City Clerk does not receive the request in the required period, the applicant/permittee shall have waived the right to a hearing and the determination shall be deemed confirmed and final.

SECTION 15: Section 5.04.290 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:

5.04.290 Hearing to contest modification, suspension or revocation – Notice of hearing.

If a timely and complete request for hearing is made, the City will set a hearing before the City Council for the City Council to determine whether grounds in Section 5.02.200 or 5.04.310, as the case may be, have been established to support the City's determination. Written notice of the date, time, and location of the hearing shall be given to the applicant/permittee not less than 10 days prior to the hearing by first class mail. Service of this notice is deemed complete at time of mailing. The failure of a applicant/permittee to receive a properly addressed notice shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to these applicable sections. The hearing will be conducted within 60 days of the date a timely and complete request is received by the Office of the City Clerk unless otherwise agreed to by the applicant/permittee and the City.

SECTION 16: Section 5.04.300 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:

5.04.300 Hearing to contest modification, suspension or revocation – Procedure for hearing.

(A) Right to witnesses and submission of documentary evidence. The applicant/permittee and the City shall have the right to bring witnesses to testify whether the grounds in Section 5.02.200 or 5.04.310, as the case may be, have been established and cross-examine each other's witnesses. The applicant/permittee and the City also have the right to submit in advance of the hearing—no later than 3 calendar days prior to the date set for hearing—written argument and documentary evidence on whether the grounds in Section 5.02.200 or 5.04.310, as the case may be, have been established. Such submission shall be made by first class mail unless otherwise agreed to by the applicant/permittee and the City, such as via email. Failure to receive said written material

shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to this Section.

(B) Procedure and rules of evidence. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Oral evidence shall be taken only on oath or affirmation. The City bears the burden of proof to establish the grounds in Section 5.02.200 or 5.04.310, as the case may be, by a preponderance of evidence. An applicant/permittee may bring an interpreter to the hearing provided there is no expense to the City therefor. The City Council may question any person who presents evidence or who testifies at any hearing. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing in accordance with PMC 2.08.090.

(C) Decision. The City Council shall issue its decision in writing promptly and notice of it must be made via first-class mail to the applicant/permittee and City. The decision shall contain a determination of the issues presented, including the evidence supporting whether the grounds in Section 5.02.200 or 5.04.310, as the case may be, were established and the applicable grounds in Section 5.02.200 or 5.04.310, as the case may be.

(D) Judicial Appeal. The determination issued by the City Council shall be deemed a final order and may be judicially reviewed pursuant to California Code of Civil Procedure Section 1094.6. There is no right to a further administrative appeal.

SECTION 17: The first phrase of Section 5.04.310 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows, as provided in pertinent part:

5.04.310 Grounds for modification, suspension or revocation of business permit.

The City may condition, modify, suspend or revoke a business permit for any business activity required to be permitted under this Chapter as provided in Section 5.04.270 if the City finds that one or more of the following conditions exist:

SECTION 18: Section 5.04.320 of Title 5 of the Palmdale Municipal Code is hereby amended to read as follows:

5.04.320 Effect of revocation or suspension.

(A) No refunds of any business permit fees shall be made to any permittee upon revocation or suspension of a business permit.

(B) Following revocation of any business permit under this Chapter, no business license to conduct the same business activity shall be issued to the same person for a period of one year.

(C) Whenever a business permit is suspended or revoked, the Director shall take into possession the business license for the subject business activity. The permittee shall surrender the business license and permit stickers, or similar evidence of a permit, to the Director.

(D) Upon revocation or suspension of a business permit, the permittee shall immediately cease operation of the business activity. Except as otherwise provided, if the permit is suspended, the permittee may resume operation upon expiration of the suspension period.

SECTION 19: Sections 5.04.340 through 5.04.370 of Title 5 of the Palmdale Municipal Code are hereby deleted in their entirety.

SECTION 20: Section 5.04.340 of Title 5 of the Palmdale Municipal Code is hereby added to read as follows:

5.04.340 Violations; Enforcement; Public Nuisance.

(A) Generally. Except as hereafter provided, any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC Section 1.12.030.

(B) False Statements. Any person who knowingly makes any false statement in any application for a business permit or in any report required under this Chapter is guilty of a misdemeanor and punishable as provided for in this code.

(C) Enforcement. The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this Chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.
(D) Public Nuisance. Any violation of this Chapter shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36.

SECTION 21: Section 5.04.400 subsection (B)(1)(b) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Adult Bookstore, Adult Novelty Store, Adult Video Store. The terms “adult bookstore”, “adult novelty store”, or “adult video store” as used in this Section, is an establishment that has 20 percent or more of its stock in books, magazines, periodicals or other printed matter, adult-oriented merchandise or of photographs, films, motion pictures, video cassettes, slides, tapes, records, DVD, CD-ROM, or other visual or audio representations

or any material in digital format, are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas. An adult bookstore, adult novelty store, or adult video store shall not include mail order businesses or wholesale businesses with no patrons on the premises.

SECTION 22: Section 5.04.400 subsection (B)(1)(c) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Adult Cabaret. The term “adult cabaret” as used in this Section, means a nightclub, restaurant, or similar business establishment which:

(1) features live performances which are distinguished or characterized by an emphasis upon the
display of specified anatomical areas or specified sexual activities; and/or

(2) features persons who appear semi-nude; and/or

(3) shows films, computer-generated images, motion pictures, video cassettes, slides, DVD, CD-ROM, or other visual or audio representations or any material in digital format, or other photographic reproductions and 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

SECTION 23: Section 5.04.400 subsection (B)(1)(d) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Adult Hotel/Motel. The term “adult hotel/motel” as used in this Section, means a hotel or motel or similar business establishment offering public accommodations for any form of consideration which, (1) provides patrons with closed-circuit television transmissions, films, computer-generated images, motion pictures, video cassettes, slides, DVD, CD ROM, or other visual or audio representations or any material in digital format, or other photographic reproductions and 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and (2) rents, leases, or lets any room for less than a 10 hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

SECTION 24: Section 5.04.400 subsection (B)(1)(e) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Adult Motion Picture Theater. The term “adult motion picture theater” means any business, other than a hotel or motel which regularly provides closed-circuit viewing to each individual room as a secondary service to its hotel or motel customers, with the capacity for five or more persons where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions in which the predominant character and theme is distinguished or characterized by its emphasis on

matters depicting or relating to "specified sexual activities," "specified anatomical areas" or men and/or women in a "state of nudity" or "state of partial nudity" as defined in this section, are regularly shown. This includes, without limitation, showing any such slides, motion pictures or videos by means of any video tape system which has a display, viewer, screen, or a television set. For purposes of this chapter, motion pictures receiving up to an "NC17" rating from a generally recognized movie rating organization shall not be deemed to be included in the definition of an adult motion picture theater.

SECTION 25: Section 5.04.400 subsection (B)(1)(f) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Adult live entertainment theater means any place, building, enclosure, or structure, partially or entirely used for "live adult entertainment," as defined in this section, performances or presentations characterized by an emphasis on depicting, exposing, displaying, or describing or relating to "specified sexual activities," "specified anatomical areas" or men and/or women in a "state of nudity" or "state of partial nudity" for observation by patrons or customers therein. "Live adult entertainment" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, walking, speaking, dancing, acting, posing, simulating, wrestling, or pantomiming, in which the performer(s) expose to public view without opaque covering "specified anatomical areas" or appear in a "state of nudity" or a "state of partial nudity" for any form of consideration.

SECTION 26: Section 5.04.400 subsection (B)(1)(g) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Modeling Studio. The term “modeling studio” as used in this Section, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, or on a voluntary basis, figure models who, for the purposes of sexual stimulation of patrons, appear either nude or semi-nude or display “specified anatomical areas” to be observed, sketched, photographed, painted, sculpted, or otherwise depicted by persons on the premises. “Modeling studio” does not include schools maintained pursuant to standards set by the State Board of Education. “Modeling studio” further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, allow, or make available “specified sexual activities”.

SECTION 27: Section 5.04.400 subsection (B)(3) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Adult-Oriented Merchandise. The term Adult-Oriented Merchandise” as used in the Section, means sexually oriented implements or paraphernalia, including, but not limited to dildos; auto sucks; adult-oriented vibrators; edible underwear; benwa balls; inflatable orifices; anatomical balloons with orifices; simulated vaginas, and similar adult-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

SECTION 28: Section 5.04.400 subsection (B)(5) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Bar. For the purposes of this section, a “bar” is defined as an establishment in which the primary use is the sale of alcoholic beverages for consumption on-site which requires an alcoholic beverage control license (Type 40, 41, 42, 48 or 61) which does not meet the definition of a bona fide restaurant, as defined in Chapter 17.16 of the Palmdale zoning ordinance.

SECTION 29: Section 5.04.400 subsection (B)(8) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Establishment of an Adult-Oriented Business. As used in this Section, to “establish” an Adult-Oriented Business shall mean and include any of the following:

a. The opening or commencement of any Adult-Oriented Business as a new business;

b. The conversion of an existing business, whether or not an Adult-Oriented Business, to any Adult-Oriented Business defined herein;

c. The addition of any of the Adult-Oriented Businesses defined herein to any other existing Adult-Oriented Business; or,

d. The relocation of any such Adult-Oriented Business.

SECTION 30: Section 5.04.400 subsection (B)(12) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Park. As used in this Section, the term “park” means a park, trail, recreation center, sports complex, golf course, or athletic field within the City which is under the control, operation or management of the City or other public agency.

SECTION 31: Section 5.04.400 subsection (B)(17) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Religious Institution. The term “religious institution” as used in this Section, is a structure which is used primarily for religious worship and related religious activities.

SECTION 32: Section 5.04.400 subsection (B)(18) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

School. The term “school” as used in this Section, is any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school,

kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

SECTION 33: Section 5.04.400 subsection (B)(19) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Semi-Nude. As used in this Section, the term “semi-nude” means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SECTION 34: Section 5.04.400 subsection (B)(20) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

Specified Anatomical Areas. As used in this Section, “specified anatomical areas” shall mean and include any of the following:

(a) Less than completely and opaquely covered human: i. Genitals or pubic region; ii. Buttocks; and, iii. Female breast below a point immediately above the top of the areola;

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and,
(c) Any device, costume, or covering that simulates any of the body parts included in subsection (B)(20)(a) or (b) of this section.

SECTION 35: Section 5.04.400 subsection (B)(21) of Title 5 of the Palmdale Municipal Code is hereby added to read in its entirety as follows:

Specified Sexual Activities. As used herein, “specified sexual activities” shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;

(b) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;

(c) Masturbation, actual or simulated; or,

(d) Excretory functions as part of or in connection with any of the other activities described in subsections (21)(a) through (c) of this section.

SECTION 36: Section 5.04.400 subsection (B)(22) of Title 5 of the Palmdale Municipal Code is hereby added to read in its entirety as follows:

Substantially Enlarged. The term “substantially enlarged” as used in this Section means the increase in floor area occupied by an Adult-Oriented Business by more than 10 percent of its floor area as it existed at the time an Adult-Oriented Regulatory Permit was issued for the business.

SECTION 37: Section 5.04.400 subsection (F)(5) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

(5) The City Council shall grant the application and issue the adult-oriented business regulatory permit upon findings that the proposed business meets the locational criteria of Section 17.92.010.C.1 of the City of Palmdale zoning ordinance, and that the applicant has met all of the development and performance standards and requirements of subsection (I) of this section, unless the application is denied for one or more of the reasons set forth in subsection (G) of this section. The permittee shall post the permit conspicuously in the adult-oriented business premises.

SECTION 38: Section 5.04.400 subsection (G)(1)(c) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

(c) The adult-oriented business does not comply with the zoning ordinance locational standards, Section 17.92.010.C.1;

SECTION 39: Section 5.04.400 subsection (I)(8) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:

(8) Any adult-oriented business shall comply with the provisions of PMC Section 17.92.010

SECTION 40: Section 5.04.400 subsection (W) of Title 5 of the Palmdale Municipal Code is hereby amended to read in its entirety as follows:
(W) Existing Adult-Oriented Businesses

The provisions of Title 17, Section 17.92.010(F) apply as it relates to the City’s regulations as to non-conforming uses. Any Existing Adult-Oriented Businesses not operating in compliance with Section 17.92, including Section 17.92.010(F), are not lawful businesses and are subject to the enforcement provisions of this Section 5.04.400 and any other applicable enforcement laws of the City.

SECTION 41: Sections 5.04.410 through 5.04.680 of Title 5 of the Palmdale Municipal Code are hereby repealed and deleted in its entirety; however such repeal shall not affect or excuse any violation of said Section that occurred prior to the effective date of this Ordinance, nor shall such repeal impede, deter, impact, or negate any administrative, civil, or criminal enforcement of any violation of said Section that occurred prior to the effective date of this Ordinance.

SECTION 42: Section 5.04.410 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.410 Entertainment.

(A) Definitions. For purposes of this section, the following words shall have the following meanings:

(1) “Entertainment” means and includes, but is not limited to, any act, play, review, pantomime, scene, movie, song, dance act, song and dance act, exhibition, dancing for compensation, or poetry recitation, performed for the benefit of the public, either at a private or public establishment. “Entertainment” as used herein does not include mechanical music alone.

(2) “Adult-oriented entertainment” means any entertainment in an adult arcade, adult cabaret, adult motion picture theater, adult theater, or modeling studio, as those terms are defined in PMC 5.04.400(B)(1).

(B) The requirements of this section shall be inapplicable to adult-oriented entertainment which shall be subject to the permit and regulatory requirements of PMC 5.04.400 (adult-oriented business).

(C) Application Information. In addition to the information required by PMC 5.04.140, the application for an entertainment permit shall include the following information:

(1) The names and addresses of the persons who have authority or control over the location for which the permit is requested, and a brief statement of the nature and extent of such authority or control;

(2) The name and address of the owner of the premises upon which the permitted activity is to be conducted, if the applicant is leasing such premises from the owner;

(3) Whether the entertainment to be provided is adult-oriented entertainment; and

(4) The duration of the entertainment permit requested by the applicant. The Director is specifically authorized to issue a one-day entertainment permit, subject to the permittee’s compliance with all applicable provisions of this section.

(D) Operating Requirements.

(1) Hours of Operation. Entertainment, excluding adult-oriented entertainment, may be provided at an establishment permitted to provide entertainment in any location for which it is permitted except between the hours of 2:00 a.m. and 7:00 a.m. unless the City Council specifically authorizes otherwise upon a showing of good cause and that authorization is expressly set forth on the business permit for the permitted activity.

(2) Exits. No permit may be issued pursuant to this section to any applicant if the location for which the permitted activity is being sought does not maintain unlocked doors with free and easy access sufficient to assure adequate ingress and egress in the event of an emergency.

(3) Lighting.

(a) Every business establishment at which permitted entertainment, excluding adult-oriented entertainment, may be provided shall be illuminated throughout at an intensity of at least three foot-candles during all hours of operation except while a floor show is in progress.

(b) Every business establishment at which permitted entertainment, excluding adult-oriented entertainment, may be provided shall, if it owns or operates an adjacent parking lot, provide illumination of at least two foot-candles throughout such parking lot.

(E) Prohibitions – Revocation.

(1) Except for entertainment activities or performances conducted in an adult business operating in compliance with PMC provisions regulating such activities and performances, any entertainment activities or performances which present an entertainer in a semi-nude state or reveal specified anatomical areas, or include performances which either: (a) are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities; and/or (b) feature entertainers who appear semi-nude, as defined in the City adult business ordinances in the PMC, are expressly prohibited.

(2) Any violation of this section shall result in a denial, revocation, or suspension of an applicable entertainment permit following the procedures set forth in Chapter 5.04 PMC and all applicable consequences of such denial, revocation, or suspension apply as provided in PMC 5.04.210 and 5.04.320 and related sections of this code.

(3) The City may enforce any violation of this section by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

SECTION 43: Section 5.04.420 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.420 Game arcades.

(A) Definitions. For purposes of this section, the following words shall have the following meanings:

(1) “Coin-operated game” means any game or machine, operated by the insertion of money, coin or other object, which is predominately a game of skill or amusement. Such games include, but are not limited to, coin-operated pool tables, pinball machines and video games.

(2) “Game arcade” means any place open to the public where five or more coin-operated games are kept or maintained for use and operation by the public.

(B) General Requirements.

(1) Visibility of Interior.

(a) The permittee shall maintain the interior premises of the game arcade in a manner such that it is clearly visible from the entrance to the establishment in which the game arcade is located.

(b) Notwithstanding subsection (B)(2)(a) of this section, if the game arcade is located in a physically segregated portion of the premises, the permittee shall maintain its interior in a manner such that it is clearly visible from the entrance into the game arcade.

SECTION 44: Section 5.04.430 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.430 Gun dealers.

(A) Definitions. For purposes of this section, the following term shall have the following meaning:

“Gun dealer” means any person who sells or otherwise transfers to members of the public any pistol, revolver or other firearm, new or used, capable of being concealed upon the person.

(B) Application Information.

(1) Permit Form. Any permit issued to operate a gun dealer shall be on a form provided by the State Attorney General.

(2) Application Form. Notwithstanding any other provision of this chapter, every applicant for a gun dealer permit shall fill out the application form provided by the State Attorney General.

(C) Permit Subject to Conditions. All permits issued under this section are subject to the following conditions, breach of any of which subjects the business permit to forfeiture:

(1) The business activity shall be carried on only in the building designated in the permit.

(2) The permit or a copy thereof, certified by the issuing authority, shall be posted in a conspicuous manner on the premises in which the business is being conducted.

(3) No pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered:

(a) Within 10 days of the application for the purchase, or, after notice by the Department of Justice ("Department") pursuant to subdivision (c) of Section 12076 of the State Penal Code, within 10 days of the submission to the Department of corrected copies of the register, or within 10 days of the submission to the Department of any fee required pursuant to subdivision (d) of Section 12076 of the State Penal Code, whichever is later:

(i) Unless unloaded and securely wrapped or unloaded and in a locked container;

(ii) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity to the dealer;
(iii) Whenever the dealer is notified by the Department of Justice that a purchaser is in a prohibited class described in Section 12021 or 12021.1 of the Penal Code or Section 8100 or 8103 of the Welfare and Institutions Code.

(b) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(c) The permittee shall agree to and shall act properly and promptly in processing transfers of pistols, revolvers, and other firearms capable of being concealed upon the person.

(d) The permittee shall comply with Sections 12073 and 12077 and subdivision (b) of Section 12072 of the State Penal Code.

SECTION 45: Section 5.04.440 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.440 Massage establishments and massage technicians.

(A) Definitions. For purposes of this section, the following words and phrases have the following meanings:

(1) “Certificate” means a certificate issued by a recognized school of massage (as defined in this subsection (A)), certifying completion of the required curriculum in massage training.

(2) “Corporate massage” means any massage of the neck, arms, shoulders and back area above the waist where the client is fully clothed and in a sitting position, where the massage is: (i) administered by a licensed and permitted massage technician; (ii) approved as an accessory use in a permitted location; and (iii) where the massage is limited to the upper body and conducted without the use of supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice.

(3) “Massage” means any method of treating the external parts of the body for remedial, health, or hygienic purposes by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, other similar preparations commonly used in this practice, or any other system for treatment or manipulation of the human body with or without any form of bath, such as Turkish, Russian, Swedish, Japanese, Shiatsu, acupressure, vapor, shower, electric tub, sponge, mineral, fomentation or any other type of bath, including herbal body wraps.

(4) “Massage establishment” means any establishment having a fixed place of business where any person provides or attempts to provide, engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any business of providing massages, as defined in this subsection (A), or health treatments involving massage as the principal function, and where more than one massage table or chair will be utilized, or more than one licensed and permitted massage technician will be on duty at any one time.

(5) “Massage technician” includes “masseur,” “masseuse,” “massage practitioner” and “massage therapist,” and means any person who administers to any other person, for any form of consideration or gratuity, a massage as defined in this section.

(6) “Qualified massage association” means any association that meets all of the following criteria:

(a) The association is a nonprofit organization; and

(b) The association has established as minimum education requirements for membership the completion of a minimum of 500 hours of education and training or its equivalent, in anatomy, physiology, hygiene, sanitation, massage therapy and practice, ethics of massage practice, first aid and CPR, from a recognized school of massage and has a written and practical

testing of equivalency administered and overseen by its admission committee or by a national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which is required in order to obtain membership; and

(c) The association offers and requires participation and completion by its members of a minimum number of hours of specified continuing education as a condition of continuing membership; and

(d) The association is open to members of the general public who meet the requirements for membership; and

(e) The association has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of those rules.

(7) “Recognized school of massage” means any school or institution of learning that teaches the theory, ethics, practice, profession, and work of massage, which school or institution complies with California Education Code Sections 94310 and 94311, or complies with equivalent regulations from other jurisdictions, and which requires a resident course of study before the student is furnished with a diploma or certificate of graduation. No school offering a correspondence course and not requiring actual attendance will be deemed to be a recognized school of massage. A school of massage may not provide massage services to any member of the general public for any form of compensation, gratuity or consideration.

(8) “Sheriff” means the Los Angeles County Sheriff or his or her designee.

(B) Exemptions. This section shall not apply to the following:

(1) The provisions of this section that require a massage technician permit are not applicable to, and may not be construed as applying to, any of the following persons:

(a) Physicians, surgeons, chiropractors, osteopaths, physical therapists or any registered or licensed vocational nurse working on the premises of and under the direct supervision of a physician, surgeon, chiropractor, osteopath, or physical therapist duly licensed to practice that profession in the state of California. Practical nurses, or other persons not having a massage technician permit whether or not employed by the physician, surgeon, chiropractor, osteopath, or physical therapist, may not administer or practice massage;

(b) State-licensed acupuncturists;

(c) Registered nurses and licensed vocational nurses;

(d) Coaches or trainers of amateur, semiprofessional, or professional athletes;

(e) Barbers and beauticians, duly licensed under the laws of the state of California, while engaging in their professions; provided, however, that this exception applies solely to the massaging of the neck, scalp and hair of the customer or client;

(f) State-certified massage technicians pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code who are practicing massage consistent with the requirements therein.

(2) The provisions of this section that require a massage establishment permit are not applicable to, and may not be construed as applying to, any of the following:

(a) Hospitals, nursing homes, sanitariums, or other health care facilities licensed by the state of California;

(b) Hospices, including those located in residences, that are licensed by the County of Los Angeles;

(c) The athletic departments of accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment;

(d) Health fairs or similar special events that are reviewed and approved by the Director;

(e) A health club, fitness center, gymnasium, hotel with over 100 rooms, a suntan parlor, a barber or beauty shop where massage is provided as an approved accessory use to the primary business;

(f) Physician's, surgeon's, chiropractor's, osteopath's, or physical therapist's medical practice as an approved accessory to the primary business;

(g) Massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code, and to massage establishments or businesses that employ or use only persons certified to provide massage services pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code who are practicing massage consistent with the requirements therein.

(C) Permit Application – Massage Establishments. It is unlawful for any person, to engage in, conduct, or carry on, or to permit to be engaged in, conducted or carried on, in or upon

any premises within the City, the operation of a massage establishment as defined in this section without first having obtained a permit issued by the City pursuant to the provisions of this section. A permit is valid as provided for in PMC 5.04.230, unless earlier revoked or suspended. The required permit is in addition to any business license required by this code. The application for a permit does not authorize operation of a massage establishment unless and until the permit has been issued. In addition to the information required by PMC 5.04.140, all applications for a permit to conduct a massage establishment business must contain the following information, as applicable:

(1) The nature of the ownership of the business, i.e., whether by an individual, partnership, corporation, or otherwise. If the applicant is a corporation, the name of the corporation must be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses and telephone numbers, and business addresses and telephone numbers, of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of that corporation. If the applicant is a partnership, the application must set forth the name, residence and business addresses, and telephone numbers, of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the Secretary of the State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations is applicable. The applicant corporation or partnership must designate one of its officers or general partners to act as its responsible managing officer. That designated person must complete and sign all application forms required for an individual applicant under this subsection, but only one application fee will be charged;

(2) The precise name or names under which the business of the massage establishment is to be conducted;

(3) The business address and all telephone numbers of the massage establishment;

(4) A list of the names, residence addresses, and telephone numbers of all proposed massage technicians and employees to be employed by the massage establishment, and the name, residence address, and telephone number of the manager or managing employee proposed to be principally in charge of the operation of the massage establishment;

(5) A description of any other business operated on the same premises, or within the City or the state of California, that is owned or operated by the applicant;

(6) The present address, telephone number, and the previous addresses, if any, of the applicant for the last 10 years immediately preceding the date of the permit application and the dates of each address;

(7) Written proof of the applicant’s or responsible managing officer’s age, height, weight, color of hair and eyes, sex, and date of birth;

(8) Two identification photographs at least two inches by two inches taken in the last six months and fingerprints of the applicant or the responsible managing officer;

(9) The employment history and experience of the applicant in the massage or similar business for the last 10 years immediately preceding the date of application including, but not limited to, the massage or similar business history and experience in this City or any other city or state;

(10) Whether the applicant has had any other permit or license issued by an agency, board, city, county, territory, or state; the date of issuance of that permit or license, and whether the permit or license was denied, revoked or suspended; or, if a vocational or professional license or permit was denied, revoked or suspended, the reason therefor;

(11) All criminal convictions, including ordinance violations and pleas of nolo contendere, within the last 10 years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding traffic violations, and a statement as to the date and place of each such conviction and reasons therefor;

(12) The name and address of the owner or lessor of the real property upon which the business is to be conducted. If the applicant is not the owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on that property;

(13) Proof of matriculation from a “recognized school of massage,” as defined in subsection (A) of this section. If the applicant is a corporation or partnership, then this proof must be supplied for the member of the corporation or partnership who will actively participate in the management of the massage establishment, and who is designated as the responsible managing officer;

(14) Proof of membership in a “qualified massage association,” as defined in subsection (A) of this section;

(15) A floor plan of the massage establishment indicating all proposed tenant improvements, including the location of each room, massage table and/or chair dedicated to providing massage services. No alterations to the approved floor plan will be permitted unless and until reviewed and approved by the appropriate City departments;

(16) Authorization for the City, its agents and employees, to seek verification of all information contained in the application;

(17) Such other information as may be deemed necessary by the Director or the Sheriff’s Department;

(18) A statement in writing, signed and dated by the applicant, declaring under penalty of perjury that all information contained in the application is true and correct and that all provisions of this section will be adhered to.

(D) Massage Establishment – Permit Issuance and Denial. Upon receipt of a written application, the Director will have 60 days to conduct an investigation to ascertain whether the permit should be issued. The Director must forward a recommendation to the City Council, which has the authority to issue the permit unless it makes any of the following findings:

(1) The applicant, if an individual, or any officers, directors, or shareholders of the corporation, if the applicant is a corporation, or any of the partners including limited partners, if the applicant is a partnership, or any person proposed to be engaged or employed in the massage establishment, has within 10 years preceding the date of the application:

(a) Been convicted of a violation of California Penal Code Section 266(h), 266(i), 314, 315, 316, 318, or subsection (a) or (b) of Penal Code Section 647, or any other provisions of law that require a person to register under the provisions of Penal Code Section 290, or where the prosecution accepted a plea of guilty or nolo contendere to a charge of violating Penal Code Section 415, or any lesser included offense, in satisfaction of or as a substitute for any of the previously listed crimes;

(b) Been convicted of a violation of Health and Safety Code Section 11550, or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058;

(c) Been convicted of an offense in any other state, which offense is the equivalent of any of the above referenced offenses;

(d) Engaged in conduct that would constitute grounds for suspension or revocation under this Section;

(e) Been subjected to a permanent injunction against the conduct or maintenance of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or similar provisions of law of a jurisdiction outside the state of California; and

(f) Been convicted of an act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are related to the qualifications, functions or duties of the applicant;

(2) The applicant had a massage operator or massage technician permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county, or state within 10 years prior to the date of application;

(3) The applicant has made false, misleading, or fraudulent statement(s) or omission(s) of fact to the City in the permit application process;

(4) The application does not contain all of the information required by subsection (C) of this Section;

(5) The massage establishment, as proposed by the applicant, would not comply with all applicable laws, including but not limited to health, zoning, fire, and safety requirements and standards;

(6) The applicant has not satisfied the requirements of this section within the time specified.

If the application is denied for failure to comply with subsection (D)(3) or (4) of this section, the applicant may not reapply for a period of 12 months from the date the application was denied.

(E) Massage Establishment – General Provisions. All permittees must comply with the following conditions and any other conditions specified by the City Council in connection with the issuance of a permit:

(1) Prior to occupancy of the massage establishment, a final inspection by the appropriate City departments and agencies will be conducted to verify compliance with the approved plans and with all applicable provisions of this section. On-going operation of the massage establishment must be in conformance with this code and the zoning ordinance at all times.

(2) No massage technician, employee, or manager may massage the genital or anal area of any patron, or the breasts of any female patron, nor may any permittee or manager of a massage establishment allow such massage. No massage technician, operator, or manager, while performing any task or service associated with the business of the massage establishment, may be present in any room with another person unless that person's genitals, anus, or, in the case of a female, her breasts, are completely covered by a fully opaque, nontransparent material.

(3) No permittee may conduct business under any name not specified in the permit.

(4) All massage establishments must have a manager on the premises at all times that the massage establishment is open. The permittee of the massage establishment must file a statement with the Director designating the person or persons who are authorized to act as the manager and to ensure compliance with this section, as well as

being the person to whom notices required by this chapter may be delivered to for receipt by the permittee.

(5) No massage establishment may be or remain open for business without having at least one massage technician on duty on the premises who holds a current valid permit.

(6) The permittee and its designated manager(s) must ensure that the permit for each on-duty massage technician is conspicuously displayed in a location visible to the patrons, and that each massage technician is wearing the photo identification required by subsection (J)(2) of this section.

(7) No permittee may employ any person as a massage technician who does not have a valid massage technician permit issued pursuant to this section. Every permittee must report to the Director any change of employees, whether by way of new or renewed employment, discharge or termination. The report must set forth the name of the employee and the date of hire or termination. The report must be made within five days of the hire or termination. The permittee must deliver to the Director the permit and photo identification card of any massage technician no longer employed by the permittee.

(8) All persons employed in the massage establishment must be fully clothed at all times. Clothing must be of a fully opaque, nontransparent material and provide complete covering from mid-thigh to three inches below the collar bone.

(9) Each permittee must conspicuously display the current massage establishment permit in a location within the massage establishment that is visible to patrons.

(10) The permittee must comply with all provisions of this section and all applicable provisions of this code.

(F) Massage Establishment – Facility and Operating Requirements.

(1) Facilities.

(a) Structure. Massage must be conducted in a structure that is located in a zone district where that use is authorized.

(b) Services List. Each permittee must post and maintain in a conspicuous location within the premises, a list, in English, of services available and the cost of those services. No permittee, or responsible managing officer, may permit, and no massage technician may offer or perform, any services other than those posted.

(c) Lighting. Each permittee must provide in each room where massage is conducted sufficient lighting and ventilation that complies with the Uniform Building Code. The lighting in each massage room must be provided by at least one 60-watt white light bulb and must be activated at all times while a patron is in that room or enclosure. No strobe flashing lights may be used.

No colored lights may be used nor may any coverings be used which change the color of the primary light source.

(d) Bath Facilities. A minimum of one toilet and one separate wash basin must be provided for patrons in each massage establishment. The basin must provide soap or detergent and hot running water at all times and must be located within close proximity to the area devoted to the conduct of massage services. A permanently installed soap dispenser, filled with soap, and a single-service towel dispenser must be provided at the restroom hand wash sink. In addition, a separate wash basin must be provided for the use of employees. No bar soap may be used. A trash receptacle must be provided in each toilet room. Showers may be provided at the permittee's option.

(e) Linen Storage. Closed cabinets must be provided and used for storage of clean linens, and approved receptacles must be provided for the deposit of soiled linen. All cabinets and receptacles must be clearly labeled.

(f) Separate Rooms. If male and female patrons are to be treated simultaneously at the same massage establishment, then separate massage rooms must be provided for male and female patrons.

(g) Maintenance. All facilities of the massage establishment must be in good repair and must be thoroughly cleaned and sanitized each day that the business is in operation. The surfaces of all walls, floors, and ceilings of each restroom and shower area, if provided, must be made smooth so as to be easily cleaned. No carpeting may be installed in any of these areas.

(h) Massage Table. A massage table must be provided in each massage room dedicated for massage services and the massage must be performed on the massage table.

The tables must be a minimum height of 18 inches. Two-inch-thick foam pads, with a maximum width of four feet, may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses, and waterbeds may not be used in the administration of a massage.

(2) Operating Requirements.

(a) Same Use. No massage establishment may operate as a school of massage, or use the same facilities that are used by a school of massage.

(b) Equipment. Each permittee must provide and maintain adequate equipment for disinfecting and sterilizing any instruments used in massage. Instruments used in performing massage may not be used on more than

one patron unless they have been sterilized using approved sterilizing methods.

(c) Inspections. The permittee must consent to the inspection of the massage establishment by the City's Division of Building and Safety, Code Enforcement Department, Fire Department, Sheriff's Department, and the County Health Department for the purpose of determining that the provisions of this section, and all other applicable laws or regulations, are met. Routine inspections may not exceed more than two each year, unless violations are found or complaints are received. During the inspection, verification of the identity of all on-duty massage technicians may occur. Inspections of the massage establishment may be conducted at any time the business is in operation or at any other time that employees are on the premises.

(d) Linen. Common use of towels or linen may not be permitted. Towels and linen must be laundered or changed promptly after each use. Separate enclosed cabinets with doors or covers must be provided for the storage of clean and soiled linen and must be plainly marked "Clean Linen" and "Soiled Linen."

(e) Living Quarters Prohibited. No person may be permitted to reside within any massage establishment at any time. No kitchen facilities may be provided within any massage establishment, and no food of any kind may be prepared for sale or sold in the massage establishment. The sale of prepackaged herbs and lotions is permitted; provided, that no more than 10 percent of the floor area is dedicated for that use.

(f) Alcoholic Beverages/Drugs. No person may enter, or remain in, any part of a massage establishment while in possession of, consuming, using, or under the influence of, any alcoholic beverage or controlled substance. The permittee and manager are responsible to ensure that no such person enters or remains upon the premises of the massage establishment. Service or possession of alcoholic beverages by the establishment or any other person on the premises of the establishment, including the area beyond the reception area, is prohibited.

(g) Recordings. No electrical, mechanical, or other device may be used by the permittee or any employee of a massage establishment for audio or video recording, or for monitoring the conduct of a massage or any conversation or other sounds in the massage rooms.

(h) Employee Records. The permittee or manager of the massage establishment must keep a complete and current list of the names and residence addresses of all massage technicians and employees of the massage establishment, and the name and residence addresses of the manager or managing employee who is designated to be primarily in charge

of the operation of the massage establishment. This roster must be kept on the premises for immediate inspection by officials charged with enforcement of this section.

(i) Coverings. Each massage establishment must provide to all patrons clean, sanitary, and opaque nontransparent coverings capable of covering the patron's specified anatomical areas, including the genital area, anus and female breasts. No common use of these coverings is permitted, and reuse of these coverings is prohibited unless properly cleaned.

(j) Client Records. Every massage establishment must require all patrons to print and sign a register book in a legible manner. Records must be kept of the dates and hours of each massage treatment or service, the name and address of the patron, the name of the massage technician administering that service, and a description of the massage treatment or service rendered. A short medical history form must be completed by the permittee to determine whether the patron has any physical condition which may be adversely affected by the massage. These records must be prepared prior to administering any massage or treatment and must be retained on the premises for a period of 24 months after the treatment or service. These records must be open to immediate inspection only by officials charged with enforcement of this section and for no other purpose. Any unauthorized disclosure or use of that information by any officer or employee of the City constitutes a misdemeanor.

(k) Hours of Operation. No person may operate a massage establishment or administer a massage in any massage establishment, or as an accessory use, between the hours of 10:00 p.m. and 7:00 a.m. A massage that is commenced anytime before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons, and visitors must be excluded from the massage establishment or the massage area between 10:00 p.m. and 7:00 a.m.

(l) Advertising. No massage establishment or other business that is issued a permit under this section may place, publish, distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients or customers that any service is available other than those services described in this section, nor may any massage establishment employ language in the text of that advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this section.

(m) Persons with Disabilities. All massage establishments must comply with all state and federal laws and regulations relating to persons with disabilities.

(n) Doors. All front, reception, hallway, or front exterior doors (except back or rear exterior doors used for employee entrance to and exit from the massage establishment) must remain unlocked during business hours. No massage may be given within any cubicle, room, booth, or any other area within a massage establishment that is fitted with a door capable of being locked, unless the only door is an exterior door.

(o) Tinted or “One-Way” Glass. No massage establishment may be equipped with tinted or “one-way” glass in any room, office or store front window.

(3) Exception. The provisions of this subsection, facility and operating requirements for a massage establishment, are not applicable to and may not be construed as applying to massage establishments or businesses that are sole proprietorships or to massage establishments or businesses that employ or use only persons certified to provide massage services pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code and who are practicing massage consistent with the requirements therein.

(G) Change of Management or Ownership.

(1) Every permittee of a massage establishment must immediately report to the Director any change of ownership or management of the massage establishment, including, but not limited to, the change of manager or other person primarily in charge, a change in the mailing address of the owner, permittee, manager or other person primarily in charge, a change in stockholders holding more than five percent of the stock of the corporation, changes in officers, directors or partners, changes in the mailing address of the officers, directors or partners, any change of name, style, or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage establishment. A change in the location of any premises will require a new application for a massage establishment.

(2) No massage establishment permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment, will be deemed to constitute a voluntary surrender of that permit, and that permit will thereafter be null and void; provided, however, that if the permittee is a partnership, and one or more of the partners dies, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of the permit, and, in such case, upon notification to the Director, the permit will be placed in the name of the surviving partners. A massage establishment permit issued to a corporation will be terminated when either: (i) any outstanding stock of the corporation is sold, transferred, or assigned after the issuance of a permit; or (ii) any stock authorized but not issued at the time of the granting of the permit is thereafter issued, sold,

transferred, or assigned. No massage technician permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons.

(H) Permit Application – Massage Technicians. No person may perform or administer a massage, or advertise to provide massage services in the City, without first obtaining a permit issued by the City pursuant to the provisions set forth below. A permit is valid as provided for in PMC 5.04.230, unless earlier revoked or suspended. The required permit is in addition to any business license required by this code. In addition to the information required by PMC 5.04.140, an application for a massage technician permit must include the following information, as applicable:

(1) The primary business location at which the applicant will be working as a massage technician, including the full name of the business, street address, and all telephone numbers associated with that business location. If the massage technician will be providing massage at more than one location, the primary business location must be identified as well as all other locations, including the names, addresses, and telephone numbers of those other locations;

(2) The full true name and any other name used by the applicant;

(3) The present address and telephone number, and all previous addresses of the applicant for the last 10 years immediately prior to the date of application;

(4) Written proof of the applicant's age, height, weight, sex, color of eyes and hair, and date of birth;

(5) Two identification photographs at least two inches by two inches taken in the last six months, and the applicant's fingerprints;

(6) The employment history or experience of the applicant in the massage or similar business for the last 10 years immediately preceding the date of application, including, but not limited to, the massage or similar business history and experience in this City or any other city or state;

(7) Whether the applicant has had any other permit or license as a massage technician issued by an agency, board, city, county, territory, or state; the date of issuance of that permit or license, and whether the permit or license was denied, revoked or suspended, and the reason therefor. That information must include the business activity or occupation engaged in by the applicant subsequent to any suspension or revocation;

(8) All criminal convictions, including ordinance violations and pleas of nolo contendere, within the last 10 years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding for traffic violations, and a statement as to the date and place of each such conviction and reasons therefor;

(9) Documentation of the applicant's experience as a practicing massage technician, as applicable;

(10) Proof of matriculation from a "recognized school of massage," as defined in subsection (A) of this section;

(11) Proof of membership in a "qualified massage association," as defined in subsection (A) of this section;

(12) Authorization for the City, its agents and employees, to seek verification of all information contained in the application;

(13) Such other information as may be deemed necessary by the Director or the Sheriff's Department;

(14) A statement in writing, signed and dated by the applicant, declaring under penalty of perjury that all information contained in the application is true and correct and that all provisions of this section will be adhered to.

(I) Massage Technician – Permit Issuance and Denial. Upon receipt of a written application, the Director will have 60 days to conduct an investigation to ascertain whether the permit should be issued. The Director must forward a recommendation to the City Council, which has the authority to issue the permit unless it makes any of the following findings:

(1) The applicant has, within 10 years preceding the date of the application, been convicted of any of the following:

(a) A violation of California Penal Code Section 266(h), 266(i), 314, 315, 316, 318, or subsection (a) or (b) of Penal Code Section 647, or any other provisions of law that require a person to register under the provisions of Penal Code Section 290, or where the prosecution accepted a plea of guilty or nolo contendere to a charge violating Penal Code Section 415, or any lesser included offense, in satisfaction of or as a substitute for any of the previously listed crimes,

(b) A violation of Health and Safety Code Section 11550, or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058,

(c) Conviction for an offense in any other state, which offense is the equivalent of any of the above referenced offenses;

(2) The applicant has been convicted of an act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are related to the qualifications, functions or duties of a massage technician;

(3) The applicant has had a massage operator or massage technician permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county, or state within 10 years prior to the date of application;

(4) The applicant has made false, misleading or fraudulent statement(s) or omission(s) of fact to the City in the permit application process;

(5) The application does not contain all of the information required by subsection (H) of this section;

(6) The applicant has not satisfied the requirements of this section within the time specified.

If the application is denied for failure to comply with subsection (I)(4) or (5) of this section, the applicant may not reapply for a period of 12 months from the date the application was denied.

(J) Massage Technicians – General Provisions. All massage technicians must comply with the following conditions and any other conditions specified by the City Council in connection with the issuance of a permit:

(1) No massage technician may massage the genital or anal area of any patron, or the breasts of any female patron. No massage technician, while performing any task or service associated with the massage business, may be present in any room with another person unless that person's genitals, anus, or, in the case of a female, her breasts, are completely covered by a fully opaque nontransparent material.

(2) The massage technician must wear a photo identification card issued by the City at all times when acting as a massage technician in the massage establishment or other approved place of business. The identification card must be worn on the outer clothing with the photo side facing out. If a massage technician changes his or her business address, he or she must, prior to that change, obtain from the Director a new photo identification card and advise the Director in writing of the new business address.

(3) Massage technicians may not perform any massage at any location other than the location specified in the permit.

(4) While on duty, the massage technician may not use any name other than that specified on the photo identification card.

(5) Massage technicians must be fully clothed at all times. Clothing must be of a fully opaque, nontransparent material and provide complete covering from mid-thigh to three inches below the collar bone.

(6) The massage technician shall consent to the inspection of the massage establishment and occupied massage rooms by the City's Division of Building and Safety and Code Enforcement Department, Fire Department, Sheriff's Department and the Health Department for the purpose of determining that the provisions of this article and other applicable laws or regulations are met.

(7) The massage technician must consent to the inspection of the occupied massage room or areas by the City's Division of Building and Safety, Code Enforcement Department, Fire Department, Sheriff's Department, and the Health Department for the purposes of determining that the provisions of this section and other applicable laws or regulations are met.

(8) No massage technician permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons.

(9) The massage technician must comply with all provisions of this section and any applicable provisions of this code.

(K) Corporate Massage Businesses.

(1) Any person desiring to perform corporate massage, as defined in subsection (A) of this section, must first be conducting business at a fixed location that has a massage establishment permit or that is authorized to provide massage as an accessory use.

(2) Corporate massage may be performed only by a person who possesses a valid massage technician permit issued by the City.

(3) The massage technician or massage establishment offering corporate massage must have a signed contract for service at each location where the service is to be provided, and copies of all contracts must be provided to the City for review upon submittal of the business permit application. The contract must specify the location, days and times the service is to be offered.

(4) Corporate massage must be conducted at a commercial or industrial place of business and must be administered only to the employees of that business.

(5) Corporate massage must be provided only in a public area, to which all employees are provided free access.

(6) Corporate massage must be offered at a specified time and day at each location and may not be offered at any other time. In no event may corporate massage be permitted or offered between the hours of 9:00 p.m. and 7:00 a.m.

(L) Fees.

(1) The City Council will establish by resolution, and may from time to time amend, the fees for the administration of this section. Fees required by that resolution are in addition to any other fees required under other sections of this code.

(M) Existing Permits/Compliance.

(1) Commencing on the effective date of the ordinance amending this section, permits will be issued in accordance with the provisions of this section.

(2) All persons holding existing massage establishment permits or massage technician permits will have one year from the effective date of the ordinance amending this section to comply with all requirements of this section.

(N) Duration of Permits.

(1) Permits for massage establishments and massage technicians will be renewed to coincide with the duration of permits issued as provided for in PMC 5.04.230; provided, that the applicant continues to meet the requirements of this section.

(2) A renewal application for an existing permit must be filed with the Director before the expiration date of the existing permit. Temporary permits will not be issued, and renewal applications must be filed no later than 60 days prior to the expiration of the permit to prevent a lapse of the permit.

(3) Renewal applications will require such information as may be required by the Director to update the information contained in the original permit application and to conduct an investigation to ascertain whether a renewal should be issued. The Director must forward a recommendation to the City Council, which has the authority to renew a permit, as provided for in subsections (D) and (I) of this section. The appropriate filing fee must accompany the application for renewal.

(O) Suspension, Revocation and Nonrenewal.

(1) Revocation, Suspension and Nonrenewal of an Operator's Permit.

(a) The City Council may suspend a massage establishment permit for a period of 30 days for each violation of the provisions of subsection (E) (massage establishments – general provisions) or (F) (massage establishment – facility and operating requirements) of this section or on the grounds that the applicant or permittee has failed to comply with any of the permit conditions or other requirements of this section as determined by the

Director and recommended to the City Council by the Director. If a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period.

(b) The City Council may revoke or refuse to renew a massage establishment permit under the following circumstances: (i) facts exist that would support findings for denial of a permit under any provision of subsection (D) of this section; or (ii) there is a subsequent violation of any provision of subsection (E) or (F) of this section within one year following suspension of the permit under subsection (O)(1)(a) of this section; or (iii) the permittee has demonstrated its inability to operate or manage the massage establishment in a lawful manner, thereby necessitating one or more responses by Law Enforcement Officers.

(c) The Director must notify the applicant, permittee, or manager in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant, permittee, or manager with a notice of intent to suspend, revoke or refuse to renew a permit. This notice must state the reasons for the recommendation and date the City Council will consider the recommendation.

(2) Revocation, Suspension and Nonrenewal of a Massage Technician's Permit.

(a) The City Council may suspend a massage technician permit for a period of 30 days for each violation of the provisions of subsection (J) (massage technician – general provisions) of this section or on the grounds that the applicant or permittee has failed to comply with any of the permit conditions or other requirements of this section as determined by the Director and recommended to the City Council by the Director if a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period.

(b) The City Council may revoke or refuse to renew a massage technician permit under the following circumstances: (i) facts exist that would support findings for denial of a permit under any provision of subsection (I) of this section; or (ii) there is a subsequent violation of any provision of subsection (J) of this section within one year following suspension of the permit under subsection (O)(2)(a) of this section; or (iii) the permittee has demonstrated its inability to conduct massage services within a massage establishment in a lawful manner, thereby necessitating one or more responses by Law Enforcement Officers.

(c) The Director must notify the applicant or permittee in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant or permittee, with a notice of intent to suspend, revoke or refuse to renew a permit. This notice must state the

reasons for the recommendation and date the City Council will consider the recommendation.

(3) Notice.

(a) If the City Council determines that grounds exist for the suspension, revocation, or nonrenewal of a permit, the Director must serve the applicant, permittee, or manager in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant, permittee or manager, with a notice of denial or notice of suspension, revocation or refusal to renew permit. This notice must state the reasons for the action and the effective date of the decision.

(4) Violation and Penalty.

(a) Every person, who is subject to this section, and who violates any of the provisions of this section by administering a massage, or by operating a massage establishment, or by advertising the availability of massage, without first obtaining a permit and a business license from the City to do so, or who violates any other provisions of this section is guilty of a misdemeanor.

(b) Any massage establishment that is operated, conducted, or maintained contrary to the provisions of this section may be declared to be unlawful and a public nuisance, and the City, in addition to or in lieu of prosecuting a criminal action, may commence an action or proceeding to abate that public nuisance in the manner provided by law, and to restrain and enjoin any person from operating, conducting, or maintaining a massage establishment contrary to the provisions of this code.

SECTION 46: Section 5.04.450 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.450 Pawnbrokers and secondhand dealers.

(A) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) “Builders’ tools” means all tools customarily used in the construction, alteration, or repair of buildings.

(2) “Coin dealer” means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial-grade ingots of gold, or silver, or other precious metals.

(3) “Pawnbroker” means any person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan.

(4) “Secondhand dealer” means and includes any person, copartnership, firm or corporation whose business includes buying, selling, trading, accepting for sale or consignment, accepting for auctioning or auctioning secondhand tangible personal property. A “secondhand dealer” does not include a coin dealer or participants at gun shows or events, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, who are not required to be licensed pursuant to Section 12071 of the Penal Code, who are acting in compliance with the requirements of Section 12070 and subdivision (d) of Section 12072 of the Penal Code, and who are not gun show traders, as described in paragraph (5) of subdivision (b) of Section 12070 of the Penal Code.

(5) “Tangible personal property” has the same meaning as set forth in Section 21627 of the Business and Professions Code of the state of California.

(B) Application Information. In addition to the information required by PMC 5.04.140, every applicant for a business permit to operate as a pawnbroker or a secondhand dealer shall provide the following information, as applicable:

(1) The applicant’s age, height, weight, sex, and color of hair and eyes;

(2) The applicant’s current address and prior addresses within the 12 months preceding the date of the application;

(3) Whether the applicant has ever conducted a similar business in the City or elsewhere and the name under which the applicant conducted such similar business;

(4) Fingerprints and photographic identification, as defined in PMC 1.04.100; and

(5) A copy of the applicant’s current secondhand dealer or pawnbroker license issued by the state of California.

(6) Security Plan Required. The applicant shall submit a security plan. The plan should detail systems that the tenant intends on installing to protect patrons, visitors, employees, and company property/assets on site. The plan shall address issues such as safes to be installed, alarm systems, deployment of any security personnel, funds-transportation measures, hours of operation, shift personnel staffing, CCTV applications, type of loss-prevention/crime-prevention training provided to employees, and any other applicable measures.

(C) Operating Requirements.

(1) Hours of Operation. No pawnbroker or secondhand dealer, nor any employee thereof, shall accept any pledge, or loan any money for personal property, or purchase

or receive any goods, wares or merchandise, or any article or thing, or in any manner whatsoever engage in or conduct business as a pawnbroker or secondhand dealer between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day.

(2) Reporting. Every permittee under this section shall comply with Section 21628 et seq. of the Business and Professions Code or Section 21208 et seq. of the Financial Code.

(3) Any business who buys or receives as a pledge any builders' tools, as defined by this section, shall comply with Sections 21550 et seq. of the Business and Professions Code.

(4) Disposal of Property. Every permittee under this section shall be subject to and shall comply with the requirements of state law for holding and inspection of property.

(5) No transactions that require reporting under Section 21628 of the Business and Professions Code shall be engaged in with any person under 18 years of age.

SECTION 47: Section 5.04.460 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.460 Sidewalk vending.

(A) Definitions. As used in this section, the terms listed below shall have the following meaning assigned to them:

(1) "Cart" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

(2) "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

(3) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(4) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. Sidewalk vendors include roaming sidewalk vendors and stationary sidewalk vendors.

(5) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

(6) “Swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(7) “Vend” or “vending” means operating as a sidewalk vendor.

(B) Applicability. The requirements of this chapter shall not apply to the following persons:

(1) Persons delivering goods, wares, merchandise, or food upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution.

(2) Persons selling goods, wares, merchandise, or food from a motorized vehicle, including food trucks and ice cream trucks.

(C) Business License and Special Business Permit Required.

(1) No person shall operate as a sidewalk vendor without first obtaining, and at all times maintaining, a valid City business license in accordance with PMC 5.04.050 and related sections of Chapter 5.04 PMC, and complying with all requirements of the business license, unless such person qualifies for an exemption under Chapter 5.04 PMC.

(2) No person shall operate as a sidewalk vendor without first obtaining, and all times maintaining, a special business permit in accordance with this section and complying with all requirements of the permit.

(3) The special business permit shall be valid for one year unless revoked or suspended prior to expiration. An application to renew a special business permit under this section shall be made not less than 30 days prior to the expiration of the current permit. A valid business license shall be applied for or renewed concurrently with the special business permit each year.

(4) A separate business license and special business permit shall be required for each cart.

(D) Requirements for Permit Application. An application for a special business permit for sidewalk vending shall include all of the following, to the extent applicable:

(1) The name, address, and telephone number of the applicant and each person who will operate the cart.

(2) A photo identification of the applicant and each person who will operate the cart.

(3) A description of the cart, including the dimensions of the cart, and a photograph of the cart.

(4) A complete list of the food or merchandise to be sold.

(5) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(6) The vendor's California seller's permit number (California Department of Tax and Fee Administration sales tax number).

(7) A City of Palmdale business license.

(8) A copy of any license or permit required from any other state or local agency that is required by law, including, but not limited to, a copy of any required permit from the county health department, if required.

(9) A certification by the applicant that to his or her knowledge and belief, the information contained in the application is true.

(E) Identification Numbers – Confidentiality. Notwithstanding any other requirement in this code, an applicant for a business license or special business permit to operate as a sidewalk vendor shall not be required to submit a social security number for the issuance of such license or permit. In lieu of an otherwise required social security number, the City shall accept a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number along with the permit application, which must be provided at the time of application. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the license or permit program or to comply with a State law or State or Federal court order.

(F) Operational Standards.

(1) Each cart used by a sidewalk vendor must display a valid special business permit sticker at all times, which shall be issued by the City.

(2) All sidewalk vendors shall comply with the terms and conditions of the special business permit and shall not sell any food or merchandise that was not listed in the special business permit application.

(3) No stationary sidewalk vendor may operate in any residential zone; however, roaming sidewalk vendors shall not be prohibited from operating in such zones.

(4) In order to preserve the peace, safety, and tranquility of residential neighborhoods, no roaming sidewalk vendor may operate in any residential zone earlier than sunrise or later than sunset.

(5) In order to prevent obstructions of the public right-of-way, the total display area footprint of the cart, including the cart itself and any accompanying display, signage, or

related items, shall not exceed a length of 72 inches, a width of 54 inches, or a height, including roof, awning, or canopy, of 78 inches.

(6) In order to prevent obstructions of the public right-of-way, no sidewalk vendor may set up or allow the use of an additional structure, including a table, crate, carton, or rack, to increase the selling or display capacity of the cart unless such items are explicitly allowed in the special business permit obtained by the sidewalk vendor.

(7) In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall provide a trash receptacle for customers and must ensure proper disposal of customer and vendor trash. The trash receptacle must be large enough to accommodate customer trash without resort to existing trash receptacles located on any block for use by the general public. A sidewalk vendor may not dispose of customer trash in existing trash receptacles on sidewalks.

(8) In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall maintain a clean and trash-free area, including a sanitized and neat appearing cart, within a 10-foot radius around the vendor's cart during hours of operation and shall ensure that such area is clean and trash-free before relocating or closing.

(9) In order to prevent damage to public property and prevent obstructions of the public right-of-way, no cart may be chained or fastened to any pole, sign, tree, or other object in the public right-of-way.

(10) In order to preserve the safety of the public, and prevent misuse of carts, no cart may be left unattended at any time.

(11) In order to preserve the safety of the public, to prevent misuse of carts, and to prevent obstructions of the public right-of-way, no cart may be stored, parked, or left overnight on any public street or right-of-way, or in any public park or other public property.

(12) In order to preserve the safety of vehicular travelers, no sidewalk vendor may solicit business from or conduct business with persons in motor vehicles.

(13) In order to preserve the safety of vehicular travelers and pedestrians, and to preserve public peace and welfare, no cart may be outfitted with any equipment, signage, or mechanism that endangers or detracts from the health, safety, or welfare of the public by causing an excessive distraction to motorists or interfering with nearby residences, business, or pedestrians including, but not limited to, sound amplification, flashing lights, smoke, steam, bubbles, gas-powered generators, or excessive fumes.

(14) In order to preserve the safety of vehicular travelers and pedestrians, any cart operated before sunrise or after sunset, or in location with insufficient lighting, shall be equipped with sufficient lighting or reflectors to alert pedestrians and vehicular travelers to the presence of the cart.

(15) In order to prevent obstructions of the public right-of-way, all signage related to the vending operation shall be affixed to the cart, or otherwise shall be in compliance with the zoning code.

(G) Location of Carts. In order to ensure access to public rights-of-way by pedestrians and emergency personnel, and avoid interference with vehicular traffic, certified farmers' markets, swap meets, and City-permitted special events, sidewalk vendors shall not operate in the following areas of the public right-of-way:

(1) Any area other than a public sidewalk or pedestrian path.

(2) Within 15 feet of a fire hydrant, fire call box, or other emergency facility.

(3) Within 10 feet of an entrance to or emergency exit of any building or business during the hours that the building or business is open to the public.

(4) Within 15 feet of the outer edge of a driveway or driveway apron.

(5) Within 15 feet of a transit stop.

(6) Adjacent to any marked loading zone or bus zone.

(7) Within five feet of a curb return.

(8) Any location that would impede entering or exiting a parked vehicle.

(9) Any location that impedes the flow of pedestrian traffic by reducing the clear space to less than four feet or impedes access to or the use of abutting property, including, but not limited to, residences and places of business.

(10) Within 100 feet in any direction of the nearest vendor or concessionaire participating in a certified farmers' market or swap meet during the operating hours of the certified farmers' market or swap meet.

(11) Within 100 feet of a City-permitted special event including, but not limited to, parades, concerts, and movie filmings, unless vendor has received a permit to vend as part of the event. For moving events, vending shall be prohibited within 100 feet of any portion of the approved event route. For stationary events, vending shall be prohibited within 100 feet of the parcel boundary for the location of the event.

(12) Within 200 feet of any public or private school grounds between 7:00 a.m. and 4:00 p.m. on school days, and during any other time when in use and creating high vehicular traffic, such as uses for major sporting events.

(13) Upon or within any roadway, median strip, or dividing section.

(14) Any public sidewalk location when the straight path would not allow for 48 inches, or as the law updates, of clear width walking space of any sidewalk to be in compliance with Americans with Disabilities Act (ADA) regulations.

(15) Any public sidewalk where there is a 180 degree turn path for sidewalk ramps and corner curbs when the location would not allow for 42 inches approaching the turn, 48 inches at the turn, and 42 inches leaving the turn, or as the law updates, of clear width walking space of any sidewalk to be in compliance with ADA regulations.

(H) Special Requirements for the Sale of Food. All sidewalk vendors that prepare or sell food must be in compliance with all county and State permitting and licensing requirements for the preparation or sale of food.

(I) Penalties. For purposes of this section, “sidewalk vending program” refers to the provisions of subsections (F) through (H) of this section and PMC 8.24.210, inclusive, and the requirement to obtain a special business permit pursuant to PMC 5.04.590(C)(2).

(1) A violation of any provision in subsections (F) through (H) of this section and PMC 8.24.210, inclusive, may only be punished by the following:

(a) An administrative fine not exceeding $100.00 for a first violation.

(b) An administrative fine not exceeding $200.00 for a second violation within one year of the first violation.

(c) An administrative fine not exceeding $500.00 for each additional violation within one year of the first violation.

(d) Rescission of the sidewalk vendor’s special business permit for the term of that permit upon the fourth violation or subsequent violations.

(2) Vending without a special business permit may be punished by the following:

(a) An administrative fine not exceeding $250.00 for a first violation.

(b) An administrative fine not exceeding $500.00 for a second violation within one year of the first violation.
(c) An administrative fine not exceeding $1,000 for each additional violation within one year of the first violation.

(3) Upon proof of a valid special business permit, an administrative fine imposed under subsection (I)(2) of this section shall be reduced to the respective administrative fine set forth in subsection (I)(1) of this section.

(4) No other fines, fees, assessments, or financial conditions shall be imposed for violation of the sidewalk vending program other than those imposed by subsections (I)(1) and (2) of this section.

(5) Notwithstanding any other provision of this code, neither a violation of the sidewalk vending program as codified in subsections (F) through (H) of this section and PMC 8.24.210, inclusive, nor a failure to pay an administrative fine, imposed by subsection (I)(1) or (2) of this section shall be punishable as an infraction or misdemeanor.

(6) Any person who receives an administrative fine under subsection (I)(1) or (2) of this section shall have the right to request an ability-to-pay determination.

(a) The City shall give any such person written notice of his or her right to request an ability-to-pay determination as well as instructions and other materials for requesting an ability-to-pay determination at the time that the administrative fine citation is issued.

(b) A right-to-pay determination may be requested at any time following the issuance of the administrative fine citation until the fine is paid, including when payment of the fine is delinquent or has been referred to a collection program.

(c) Upon receipt of a request for an ability-to-pay determination, the City manager or his or her designee shall determine whether such person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code. The determination of the City Manager or his or her designee shall be final.

(d) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the City shall reduce the fine to 20 percent of the amount of the fine originally imposed.

(7) The City Manager may, in his or her discretion, allow a person who receives an administrative fine under subsection (I)(1) or (2) of this section to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(8) Nothing in the chapter shall be construed to limit the City's ability to enforce, or remedies for enforcing, laws of general applicability or other provisions of this code against sidewalk vendors, or to take any other enforcement actions against sidewalk vendors that are not prohibited by state or federal law, or which are allowed by this code.

SECTION 48: Section 5.04.470 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.470 Mobile vending.

(A) Purpose and Intent. It is the City's responsibility to promote the health, peace, safety, welfare and convenience of all persons in regards to their use and enjoyment of public lands. The City Council finds it necessary to regulate mobile vending for this purpose while ensuring that all such regulations comport with applicable law.

Reasonable regulations are necessary to ensure that mobile vending is operated in accordance with health, safety and traffic laws of the State and the parking ordinances of the City; do not cause public safety problems by contributing to traffic congestion or by creating pedestrian and vehicular conflicts; and do not disturb the quiet use and peaceful enjoyment of residential neighborhoods. The regulations in this section are enacted to ensure consistency with State law, including Section 22455 of the California Vehicle Code related to ice cream truck vending and California Health and Safety Code Section 114315 et seq. (the "California Retail Food Code") for food handling, as each may be amended.

(B) Definitions. As used in this section, the terms listed below shall have the following meaning assigned to them:

(1) "Food establishment" means any restaurant or grocery store with a permanent storefront location.

(2) "Goods or merchandise" means and includes items and tangible things and products of every kind and description, including any food, produce, and/or beverage items.

(3) "Human powered device" means any device moved by human power, including, but not limited to, any pushcart, wagon, bicycle, tricycle, or other wheeled device or conveyance.

(4) "Ice cream truck" means any motor vehicle requiring license from the California Department of Motor Vehicles which is used to vend at retail:

(a) Prepackaged frozen dairy or water-based food products; or

(b) Soft-serve or hand-dipped frozen dairy or water-based products; irrespective of whether or not the ice cream truck carries other prepackaged food products.

(5) "Mobile food truck" means a motorized vehicle or mobile food unit that should be licensed by the California Department of Motor Vehicles (whether licensed or not), designed and equipped to prepare, or serve, and sell food, and temporarily stored in a location where food items are sold to the general public.

(6) "Pedestrian solicitor" means a person vending goods or merchandise from their person without the use of a vehicle.

(7) “Person” means any natural person, firm, partnership, association, corporation, or other entity of any kind or nature.

(8) “Public property” means any real property, or interest therein, owned, leased, operated, or otherwise controlled by the City other than a street, alley, parkway, or sidewalk.

(9) “Vehicle” means a motorized vehicle or mobile food unit that should be licensed by the California Department of Motor Vehicles (whether licensed or not), designed and equipped to prepare, or serve, and sell food, and temporarily stored in a location where food items are sold to the general public as well as any trailer or other similar apparatus that can be attached to a motorized vehicle whether attached at the time of vending or not, and shall not include any human powered device and shall include an ice cream truck and mobile food truck.

(10) “Vehicle operator” means any person or entity owning a 10 percent or greater interest in, or operating or otherwise controlling, any business involving the vending of goods or merchandise from a vehicle.

(11) “Vend” or “vending” means the sale or offering for sale of any goods or merchandise to the public by a vehicle operator or pedestrian solicitor on a public street, private street open to the public, or other public property.

(12) “Vendor” means any pedestrian solicitor or any vehicle operator, and/or any employee, independent contractor, or other person acting on behalf of or for the benefit of a pedestrian solicitor or vehicle operator, who engages in the act of vending.

(C) Applicability. This section is intended to apply to all vending at any locations within the City. However, it does not apply in the following circumstances:

(1) Sidewalk vending described in PMC 5.04.460 if all legal requirements therein are met.

(2) Contractual or other private arrangement between a vendor and an individual or entity that wishes to have food catered to a specific location on private land and which is not open to the public, subject to the following: the vendor shall possess and at all times display in conspicuous view upon their vehicle, in connection with a vehicle operator, or upon their person, in connection with a pedestrian solicitor, a copy of the contractual document or other private arrangement detailing the terms of the agreement along with the name and contact information of the individual or entity that agreed to have food catered on private lands.

(3) Any person delivering any goods or merchandise by vehicle where such goods or merchandise have been ordered in advance for such delivery from any business located at a permanent location.

(4) Any person vending where such person has been authorized to engage in such activity by a permit, lease, real property license, agreement, or other entitlement issued by the City, State or Federal government for such purpose.

(5) Any person exempted from the provisions of this chapter by any local, State or Federal law, regulation or statute.

(D) Vehicle Operator and Pedestrian Solicitor Permits. Any person desiring to obtain a vehicle operator's permit to conduct or otherwise operate the business of vending goods or merchandise from a vehicle pursuant to this chapter shall file an application with the Business License Division of the Finance Department. Such application shall be accompanied by a nonrefundable application fee in such amount as established by resolution of the City Council. Any such permit shall be valid for one year from date of issuance. The permit may be renewed annually, subject to filing of a new application and payment of a new application fee.

(1) Vehicle Operator. Each permit applicant for a vehicle operator permit shall furnish the following information and documentation in the application:

(a) The street address where the office of the business is or will be located;

(b) The full, true name under which the business will be conducted;

(c) The full, true name and any other names used by the applicant along with a copy of a corresponding California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the permit program or to comply with a State law or State or Federal court order;

(d) The present residence and business addresses and telephone numbers of the applicant, each 10 percent or greater owner of the business, and all persons who will act as a vendor for the applicant, whether as an employee, contractor, or otherwise;

(e) A detailed description of the goods or merchandise which the applicant will vend;

(f) The make, body style, year, VIN number, State license plate number, names and addresses of each registered and legal owner of each vehicle and a copy of a valid vehicle registration for the subject vehicles;

(g) A description of the logo, color scheme, insignia, and any other distinguishing characteristics identifying applicant's business that will appear on each vehicle;

(h) The name, residential address, and telephone number of the applicant and individuals primarily responsible for managing the day-to-day operation of the vending business and/or performing any vending on behalf of the operator along with an email and cellular number for such individuals;

(i) Evidence of compliance with the insurance requirements of the Vehicle Code as to each vehicle; and

(j) The details of any known contractual or other private arrangement between a mobile food truck and an individual or entity that wishes to have food catered to a specific location on private land and which is open to the public. If this section is applicable, the permit application shall include the name and contact information of the individual or entity that wishes to have food catered on private lands as well as a copy of the contractual document or other private arrangement detailing the terms of the agreement.

(2) Pedestrian Solicitor. Each permit applicant for a pedestrian solicitor permit shall furnish the following information and documentation in the application:

(a) The street address where the office of the business is or will be located;

(b) The full, true name under which the business will be conducted;

(c) The full, true name and any other names used by the applicant along with a copy of a corresponding California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the permit program or to comply with a State law or State or Federal court order;

(d) The present residence and business addresses and telephone numbers of the applicant, each 10 percent or greater owner of the business, and all persons who will act as a vendor for the applicant, whether as an employee, contractor, or otherwise;

(e) A detailed description of the goods, merchandise, or services which the applicant will vend;

(f) The name, residential address, and telephone number of the applicant and individuals primarily responsible for managing the day-to-day operation of the vending business and/or performing any vending on behalf of the pedestrian solicitor along with an email and cellular number for such individuals; and

(g) The details of any known contractual or other private arrangement between a pedestrian solicitor and an individual or entity that wishes to have food catered to a specific location on private land and which is open to the public. If this section is applicable, the permit application shall include the name and contact information of the individual or entity that wishes to have food catered on private lands as well as a copy of the contractual document or other private arrangement detailing the terms of the agreement.

(3) The Business License Division shall be authorized to investigate the truth of the facts set forth in the application. Each application shall be approved or denied within a reasonable amount of time.

(4) Permit Denial. Any permit applied for under the provisions of this chapter may be denied for any of the following causes:

(a) One of the departments or officers performing a review of the permit renewal application has recommended denial of, or the imposition of additional conditions upon, such permit.

(b) If the City finds that the applicant knowingly made any false, misleading or fraudulent statements of material fact in the application for the permit.

(c) The applicant has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State or Federal law.

(d) Failure to comply with the requirements of this section or other provisions of the code by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.

(e) Fees, fines, or other penalties owing the City that are due and payable by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.

(5) Appeal Procedure. Written notice of denial, setting forth the grounds for denial, shall be served on the applicant. Any person aggrieved by a denial of a permit pursuant to this section may appeal such denial to the City Manager or designee pursuant to the procedures set forth in PMC 5.04.280, et. sequentes. To seek an appeal, said person must submit a written request for an administrative hearing with a statement of why the denial did not merit any of the grounds for denial under subsection (D)(4) of this section to the City Clerk within 10 days after service of notice of the City Manager’s or designee’s decision. Upon receipt of a timely appeal, the aggrieved party shall be given notice of a hearing and a hearing shall be held pursuant to PMC 5.04.280, et. sequentes.

(6) Each permittee shall notify the Business License Division, in writing, within 10 business days of any change in the required application information under subsections (D)(1) and (D)(2) of this section.

(E) Suspension and Revocation of Permit.

(1) Any vehicle operator's permit or pedestrian solicitor's permit may be temporarily suspended or revoked by the Business License Division for any of the following reasons:

(a) Provision of false information on the permit application.

(b) Failure of the permittee to notify the Business License Division within 10 business days of any change in the information supplied by the permittee upon which issuance of the permit was based, occurring subsequent to the issuance of the permit.

(c) There is substantial evidence of a violation by the permittee, any employee, subcontractor of the permittee, or any other person acting on the permittee's behalf, of this chapter or any other local, State, or Federal law constituting a misdemeanor or felony while in the course of conducting vending operations pursuant to the permit.

(d) While in the course of vending, driving of a vehicle by a vendor not possessing a valid driver's license, or operation of a vehicle found by police inspection to be unsafe and in violation of the Vehicle Code.

(e) The permittee no longer operates in accordance with the information and documentation supplied in connection with the vehicle operator permit application set forth in subsection (D)(1) of this section.

(f) The permittee no longer operates in accordance with the information and documentation supplied in connection with the pedestrian solicitor permit application set forth in subsection (D)(2) of this section.

(g) The permittee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law.

(h) Fees, fines, or other penalties owing the City that are due and payable by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.

(2) Appeal Procedure. Written notice of suspension or revocation, setting forth the grounds for suspension or revocation, shall be served on the offending permittee. The notice shall advise the permittee of the right to file a written appeal. Any person aggrieved

by a suspension or revocation of a permit pursuant to this section may appeal such denial to the City manager or designee pursuant to the procedures set forth in PMC 5.04.280, et. sequentes. To seek an appeal, said person must submit a written request for an administrative hearing with a statement of why the suspension or revocation did not merit any of the grounds for suspension or revocation under subsection (E)(1) of this section to the City Clerk within 10 days after service of notice of the City Manager's or designee's decision. Upon receipt of a timely appeal, the aggrieved party shall be given notice of a hearing and a hearing shall be held pursuant to PMC 5.04.280, et. sequentes.

(3) No person whose permit is revoked shall be eligible to apply for a new permit for a period of one year following such revocation.

(4) Notices required or permitted to be served pursuant to this section may be served personally, or by mailing by certified or registered mail with proof of delivery at the residential address of record, or by licensed courier or delivery service with proof of personal delivery, or in any other manner provided by law.

(F) Conditions and Prohibitions. It is unlawful for any pedestrian solicitor or vehicle operator to sell or offer for sale any goods, merchandise, or services upon any public street or private street open to the public, except in accordance with all applicable provisions of this code, all State and Federal laws and regulations, the terms of their City-issued permit, and in compliance with each of the following requirements:

(1) Information Made Available to the Public and City.

(a) Each vendor shall possess and at all times display in conspicuous view upon their person or upon each vehicle, as the case may be, the actual business name and telephone number, and a City business certificate issued pursuant to this title.

(b) Each vendor shall possess and display, upon request by any potential customer or City representative, a vehicle operator's permit or pedestrian solicitor's permit issued pursuant to this chapter, or a full, true and correct copy thereof.

(c) Each vendor causing the sale of or offering for sale any produce or other food item for which a food handling permit or other health permit from the county health department required by law shall possess and present such required permits. Vendors must at all times display such required permits in conspicuous view upon such vehicle or have on their immediate person ready to present at all times.

(d) Each vendor who enters into a contractual or other private arrangement with an individual or entity that agrees to have food catered to a specific location on private land and which is open to the public shall possess and at all times display in conspicuous view upon their person or vehicle a copy

of the contractual document or other private arrangement detailing the terms of the agreement along with the name and contact information of the individual or entity that agreed to have food catered on private lands.

(e) Each vendor shall possess and wear upon their person a City-issued badge, issued in connection with this chapter.

(2) Location.

(a) Vending is permitted only on public streets or private streets open to the public, and is not permitted in or upon any alley, parkway, sidewalk, or other kind of public property. Further, vending with a vehicle is not permitted in residential zones unless said vending is approved by the City in such zone in connection with a validly issued special event permit or temporary use permit, pursuant to PMC 17.27.030, prior to engaging in any residential vending.

(b) No vending shall be permitted within 50 feet of any intersection of two or more streets or any location that may impede a sidewalk or pedestrian traffic.

(c) No vending shall be permitted within 1,000 feet of the front entrance of any public or private elementary, junior high, or high school.

(d) No vending shall be permitted within 1,000 feet of the front entrance of any food establishment.

(e) No vending shall be permitted on City streets with a speed limit at or above 45 miles per hour.

(f) No vending shall be permitted at any public park unless the vending occurs as part of a City-sponsored function and the vendor has applied for and received a written endorsement on the operator permit expressly authorizing such vending.

(g) No vehicle shall be parked, stopped, or left standing in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon the public street.

(h) No vending shall be permitted until the vehicle has been brought to a complete stop and lawfully parked adjacent to the curb.

(i) No vendor shall operate in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon the public street.

(j) Vehicle vending shall be only by means of a vehicle duly registered and licensed by the State with an unladen weight of less than 6,000 pounds.

(k) All vending must ensure the safe and proper disposals of fats, oils, and greases ("FOGs") and be in compliance with applicable disposal regulations, including Los Angeles County Code (LACC), Title 20, Division 2, other laws, regulations, and ordinances concerning proper disposal of FOGs and other industrial wastes and health and safety State, local, and Federal laws.

(3) Sanitation and Trash.

(a) Each vehicle shall be equipped with a trash receptacle of a size adequate to accommodate all trash and refuse generated by vending therefrom.

(b) Each vendor shall pick up and deposit in the trash receptacle on the vehicle all paper, cups, wrapper, litter, or other refuse of any kind that was a part of the goods or merchandise supplied from the vehicle and which has been left or abandoned within 50 feet of such vehicle on any public property, other than in a trash receptacle provided for such purposes. No person shall dispose of any trash or refuse from vending operations in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of the vendor or operator.

(c) Each pedestrian solicitor shall operate within 100 feet of a trash receptacle.

(4) Operation – Hours, Amplified Sounds, Equipment, Prohibited Sales.

(a) Vending is permitted only between sunrise and sunset in residential zones.

(b) Any use of amplified sound-making devices, to advertise, draw attention to, or announce the presence of a vendor, shall also comply with all applicable noise and sound regulations effective within the City.

(c) No vending under this section may utilize chairs, tables, or other equipment unless City approval is given through an issued permit under this section.

(d) It is unlawful for any vendor to sell any item or thing which is otherwise prohibited from being sold within the City, including, but not limited to, any goods or products not identified in the application for a vehicle operator's permit or pedestrian solicitor's permit.

(5) Additional Regulations on Ice Cream Truck Vending.

(a) Safety and Sanitation.

(i) Each vendor shall ensure that the standard warning flashers shall be in operation immediately upon the vehicle stopping to vend and cease operation as the vehicle begins to move after vending.

(ii) Each vendor shall have signs painted or mounted on the front and back of each vehicle using black four-inch-tall letters on a yellow background with a black one-inch border around each sign. The sign on the front and back of each vehicle shall read “CHILDREN CROSSING” and be eight inches high by 48 inches wide. An additional sign or signs shall be painted or mounted on the rear of each vehicle above the first sign and shall read “WARNING” in English, Spanish, and Vietnamese, using the same size letter and paint requirements.

(iii) Each ice cream truck vendor shall pick up and deposit in the trash receptacle on the ice cream truck all paper, cups, wrapper, litter, or other refuse of any kind that was a part of the goods or merchandise supplied from the vehicle and which has been left or abandoned within 50 feet of such vehicle on any public property, other than in a trash receptacle provided for such purposes. No person shall dispose of any trash or refuse from vending operations in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of the vendor or operator.

(iv) Each vendor shall have any other safety equipment and follow any other requirements mandated by the California Vehicle Code.

(b) Operation – Hours, Amplified Sounds, Location, Required Sales.

(i) Hours. Ice cream truck vending is permitted only between sunrise and sunset.

(ii) Amplified Sound Use by Ice Cream Truck Vendors. Any use of amplified sound-making devices, to advertise, draw attention to, or announce the presence of such vendor, shall also comply with all applicable noise and sound regulations effective within the City in addition to the following:

A. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck when the ice cream truck is stationary.

B. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck after sunset.

C. No person shall use, play or employ any sound, outcry, amplifier, production loudspeaker, or any other instrument or device for the production of sound from an ice cream truck in such a manner to create a disturbance of the peace.

(c) Location.

(i) No vending from such vehicle shall be permitted on City streets with a speed limit above 25 miles per hour.

(ii) No person shall stop to vend from an ice cream truck within 200 feet of another ice cream truck that has already stopped to vend.

(d) Prohibited Sales. Ice cream truck vendors shall only sell frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, prepackaged snack foods, or soft drinks.

(G) Special Events. Nothing in this section shall affect the City's ability to host, sponsor, allow, or authorize special events approved for vending purposes or with vending components.

SECTION 49: Section 5.04.480 is hereby added to Title 5 of the Palmdale Municipal Code and is to read in its entirety as follows:

5.04.480 Tobacco/smoking product retailer.

(A) Definitions. For the purpose of this Section, the following terms shall have the following meanings:

(1) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, corporate or other entities which have some or all of the same directors and/or principals, or any sale for which a significant purpose is avoiding the effect of the violations of this section, is not an arm's length transaction.

(2) "Drug paraphernalia" shall have the definition set forth in California Health and Safety Code Sections 11014.5 and 11364.5, as those sections may be amended from time to time.

(3) “Electronic cigarette” shall mean an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. “Electronic cigarette” includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

(4) “Flavored electronic cigarette product” shall mean any product used in an electronic cigarette, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice, including but not limited to tobacco, mint, menthol, spearmint, wintergreen, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the product, or the smoke or vapor produced by the product.

(5) “Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10 percent or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(6) “Self-service display” means the open display or storage of tobacco products, smoking products or tobacco/smoking paraphernalia in a manner that is physically accessible in any way to the general public without assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(7) “Smoking product” means any substance produced or sold to be used for smoking, ingestion, or consumption in cigarettes, cigars, pipes, hookahs, e-cigarettes, or other similar objects.

(8) “Tobacco product” means any of the following: (1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff. (2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. (3) Any component, part, or accessory of a tobacco product, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

(9) “Tobacco/smoking paraphernalia” means shall mean cigarette papers, wrappers, or blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other instrument or

paraphernalia designed for the smoking, preparation, storing, ingestion or consumption of tobacco and other smoking products.

(10) “Tobacco/smoking product retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, in public view, tobacco, tobacco/smoking products or tobacco/smoking paraphernalia. Any person who distributes free or low cost samples of tobacco products, smoking products or tobacco/smoking paraphernalia shall be deemed to be a tobacco/smoking product retailer under this chapter. “Tobacco/smoking product retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco or smoking product, or tobacco or smoking paraphernalia sold, offered for sale, exchanged or offered for exchange.

(11) “Vending machine” as used in this section shall mean a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(12) “Youth decoy” means a person under the age of 18 who is used by the Los Angeles County Sheriff’s Department or any City official or employee authorized to enforce provisions of this chapter to conduct random on-site sting investigations to determine compliance with tobacco retailing laws.

(B) Permits Required.

(1) Any person intending to act as a tobacco/smoking product retailer shall, within one year of the effective date of the ordinance codified in this section, obtain a tobacco/smoking product retailer permit for each location at which tobacco/smoking product retailing is to occur. This applies to all existing and future tobacco/smoking product retailers in the City.

(2) It shall be unlawful for any person to act as a tobacco/smoking product retailer in the City without first obtaining and maintaining a valid tobacco/smoking product retailer’s permit pursuant to this section for each location at which that activity is to occur.

(3) The sale of tobacco/smoking products or tobacco/smoking paraphernalia from other than a fixed location, including but not limited to tobacco/smoking product retailing by persons on foot or from vehicles, is prohibited and no permit shall be issued under this section to any such activity.

(4) Nothing in this section shall be construed to grant any person obtaining and maintaining a tobacco/smoking product retailer’s permit any status or right other than the limited conditional privilege to act as a tobacco/smoking product retailer at the location in the City identified in the permit application and/or on the face of the permit. Nothing in this chapter is intended to be construed to render inapplicable, supersede, or affect any other provision of applicable law, including but not limited to any provision of this code, or any

condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5.

(5) No permit shall be issued to authorize a tobacco/smoking product retailer at a location that is permitted under state law to serve alcoholic beverages for consumption on the premises (e.g., an “on sale” license issued by the California Department of Alcoholic Beverage Control) and no permit shall issue to authorize a tobacco/smoking product retailer at any location offering food for sale for consumption by guests on the premises.

(C) Applications. In addition to the information requirement by PMC 5.04.140, the application for a tobacco/smoking product retailer permit shall contain the following information:

(1) Proof that the location for which a tobacco/smoking product retailer permit is sough
t has been issued a valid state tobacco/smoking product retailer’s permit by the California Board of Equalization.

(2) A signed affirmation by each proprietor that the proprietor is informed of the laws affecting tobacco/smoking product retailer permits. No proprietor may rely on the issuance of a permit as a determination by the City that the proprietor has complied with all laws applicable to tobacco/smoking product retailing.

(3) Whether or not any proprietor or any agent admitted violating or has been found to have violated this section and, if so, the dates and locations of all such violations within the previous five years.

(4) Each permit application must be accompanied by the required permit fee, established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the total cost of both permit administration and permit enforcement, including, for example, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the costs of the regulatory program authorized by this section. Fees are nonrefundable except as may be required by law.

(5) Such other information as the Director deems necessary for the administration or enforcement of this section as specified on the application form required by this section.

(6) A permitted tobacco/smoking product retailer shall inform the Director in writing of any change in the information submitted on an application for a tobacco/smoking product retailer’s permit within 10 business days of a change.

(7) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the law’s exemptions.

(8) A statement signed by each proprietor that no drug paraphernalia is or will be sold at the business seeking the permit.

(D) Issuance and Renewal of Permit.

(1) Except as otherwise provided herein, upon receipt of a complete application for a tobacco/smoking product retailer's permit and the payment of the applicable permit fee, the Director shall issue a permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(a) One or more of the bases for denial listed in PMC 5.04.200 exists.

(b) The application seeks authorization for tobacco/smoking product retailing that is prohibited pursuant to this section (e.g., mobile vending), that is unlawful pursuant to this code, including without limitation the zoning ordinance, building code, business license ordinance, or that is unlawful pursuant to any other law.

(c) The application seeks authorization for tobacco/smoking product retailing for a proprietor to whom this section prohibits a permit to be issued.

(d) Suspension or revocation proceedings have been initiated by any local, state or federal agency for violations of local, state or federal tobacco control laws within the preceding 60-day period.

(2) Notwithstanding any other provision of this section, prior violations at a location shall continue to be counted against a location and permit ineligibility periods shall continue to apply to a location unless:

(a) The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and

(b) The new proprietor provides the City with clear and convincing evidence that the new proprietor has acquired the location in an arm's length transaction.

(3) Every permit issued under this chapter shall be posted in accordance with PMC 5.04.100.

(4) A tobacco/smoking product retailer's permit is valid only for the location for which it has been issued and may not be transferred from one person to another or from one location to another.

(5) The duration of a tobacco/smoking product retailer permit shall be consistent with the provisions of PMC 5.04.230 and shall be renewed consistent with the provisions

of PMC 5.04.250 except that any permit that is suspended, has been permanently revoked, or is subject to suspension or revocation proceedings shall not be renewed.

(6) A tobacco/smoking product retailer permit which is not timely renewed pursuant to PMC 5.04.250 is an expired permit. The tobacco/smoking product retailer shall not engage in tobacco/smoking product retailing at the permitted location until a new permit has been issued for that location.

(7) A denial by the Director of a tobacco/smoking product retailer's permit may be appealed pursuant to PMC 5.04.280, et. sequentes. An appeal shall stay all proceedings in furtherance of the appealed action.

(8) A valid City business license is required before a tobacco/smoking product retailer's permit may be issued.

(E) Positive Identification Required. No person engaged in tobacco/smoking product retailing shall sell or transfer a tobacco or smoking product or tobacco/smoking paraphernalia to another person who appears to be under the age of 27 years, without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco or smoking product or tobacco/smoking paraphernalia.

(F) Minimum Age to Sell Tobacco Products. No tobacco/smoking product retailer shall permit any person who is younger than 18 years of age to engage or participate in the sale of tobacco or smoking products or tobacco/smoking paraphernalia.

(G) Compliance Monitoring and Enforcement.

(1) Compliance with this section shall be monitored by any City official or employee authorized to enforce provisions of this chapter or this code. Compliance checks shall determine, at a minimum, if the tobacco/smoking product retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco/smoking product retailing. Nothing in this subsection shall create a right of action in any permit or other person against the City or its agents.

(2) Youth decoys may be utilized during enforcement of this chapter. The City shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of such person's age (herein "youth decoy") if the potential violation occurs when the youth decoy is participating in a compliance check supervised by any City official or employee authorized to enforce provisions of this chapter or this code.

(H) Permit Violations and Penalties.

(1) It shall be a violation of this section for a permittee, or his/her agents or employees, to violate any federal, state, or local law or regulation, including any provision of this chapter, applicable to tobacco or smoking products, tobacco/smoking paraphernalia or tobacco/smoking product retailing.

(2) Tobacco/smoking product retailing by means of a self-service display is prohibited.

(3) It shall be a violation of this section for a permittee or any permittee's agents or employees to violate any local, state or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code Section 11364.7.

(4) It shall be a violation of this section for any tobacco retailer or any of permittee's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette product.

(a) There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored electronic cigarette products, including but not limited to individual flavored electronic cigarette products, packages of flavored electronic cigarette products, or any combination thereof, possesses such flavored electronic cigarette products with intent to sell or offer for sale.

(5) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this section shall constitute a violation.

(6) Failure to prominently display the tobacco/smoking product retailer permit in a publicly visible location at the permitted premises shall constitute a violation.

(7) The failure of the permittee to allow any law enforcement service, the Director, or any authorized City official to conduct unscheduled inspections of the premises of the business for the purpose of ensuring compliance with any federal, state, or local tobacco law or regulation, including any provision of this chapter, at any time the business is open for business shall constitute a violation.

(8) Any continuing violation shall constitute a separate offense for each day of the violation.

(9) Violations of this chapter are hereby declared to be public nuisances.

(10) Violations of this chapter are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.

(11) In addition to other remedies provided by this chapter or by other law, any violation of this section may be remedied by a civil action brought by the City Attorney in the name of the City, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and suits for injunctive relief.

(I) Revocation of Permit.

(1) In addition to any other penalty authorized by law, a tobacco/smoking product retailer's permit may be revoked by the City Council in accordance with PMC 5.04.280 through 5.04.300.

(2) Upon a finding by the City Council of a first violation of any provision of this chapter within any five-year period the City shall:

(a) Issue a written warning to the permittee.

(b) Advise the permittee of the penalties for further violations of this section.

(c) Require the permittee to provide documentation to the City that all employees engaged in the retail sales of tobacco or smoking products and/or tobacco/smoking paraphernalia have received training in a City-approved program within 60 days after the warning, or such other time as shall be set by the Director of Planning.

(d) Revoke said tobacco/smoking product retailer's permit for 90 days.

(3) Upon a finding by the City of a second permit violation of any provision of this chapter, within any five-year period, the tobacco/smoking product retailer's permit may be revoked for up to one year.

(4) Upon finding by the City of a third permit violation of any provision of this section, within any five-year period, the tobacco/smoking product retailer's permit may be permanently revoked.

(5) A tobacco/smoking product retailer's permit may be revoked by the City Council if one of the following conditions exist:

(a) One or more of the grounds for denial listed in PMC 5.04.200 existed before the permit was issued; or

(b) A permittee is convicted of a misdemeanor or felony violation of any federal, state, or local tobacco law or regulation, including any provision of this section, or in a different legal proceeding has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in this section.

(6) A tobacco/smoking product retailer whose permit has been revoked may not apply for a new tobacco/smoking product retailer's permit until 30 days prior to the expiration of the revocation period.

(7) During any period of permit revocation, the tobacco/smoking product retailer must remove from public view all tobacco or smoking products, tobacco/smoking paraphernalia and tobacco-related advertising. Failure to do so may be considered a subsequent violation.

(8) A decision of the City Council to revoke a permit is final.

(J) Tobacco Retailing without a Permit.

(1) In addition to any other penalty authorized by law, if the Director finds that any person has engaged in tobacco/smoking product retailing at any location without a valid tobacco/smoking product retailer's permit, either directly or through the person's agent or employees, the person shall be ineligible to apply for or be issued a tobacco/smoking product retailer's permit for that location as follows:

(a) After the first violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until 120 days have passed from the date of the violation.

(b) After the second violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until six months have passed from the date of the violation.

(c) After the third violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until one year has passed from the date of the violation.

(2) The display of any advertisement relating to tobacco or smoking products or tobacco/smoking paraphernalia that promotes the sale or distribution of such products from the tobacco/smoking products retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location without first obtaining and maintaining a valid tobacco/smoking products retailer's permit pursuant to this section for each location at which the advertisement is displayed is prohibited.

(3) Tobacco or smoking products and tobacco/smoking paraphernalia offered for sale or exchange in violation of this section are subject to seizure by any City official or employee authorized to enforce provisions of this chapter or this code and shall be forfeited after the permittee and any other owner of the tobacco or smoking products or tobacco/smoking paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco or smoking products or tobacco/smoking paraphernalia were not offered for sale or exchange in violation of this section. The decision by law enforcement services may be appealed pursuant to the procedures set forth in PMC

5.04.280, et. sequentes. Forfeited tobacco or smoking products and tobacco/smoking paraphernalia shall be destroyed after the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(4) For the purposes of the civil remedies provided in this section, whichever of the following is greater shall constitute a separate violation of this section:

(a) Each day on which a tobacco or smoking product or tobacco/smoking paraphernalia is offered for sale in violation of this section; or
(b) Each individual retail tobacco or smoking product and each individual retail item of tobacco/smoking paraphernalia that is distributed, sold, or offered for sale in violation of this section.

SECTION 50: Section 8.04.520 subdivision (A) of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:
(A) All persons concerned in the commission of any violation of the provisions of this Chapter, whether it be misdemeanor, infraction or administrative violation subject to administrative penalties, and whether they directly commit the act constituting the offense, or own property that the violation occurs on, or aid and abet in its commission, or, being present, are spectators and encourage its commission, or, not being present, have advised and encouraged its commission, or knowingly allow its commission on property owned by such person, and all persons counseling, advising, or encouraging children under the age of 16 years, or mentally impaired persons, to commit any offense, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any offense, or who, by threats, menaces, command, or coercion, compel another to commit any offense, are principals in any offense so committed and are guilty of and responsible for any offense so committed.

SECTION 51: Subsection (A)(1) of Section 8.24.210 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(1) All sidewalk vendors must comply with the applicable regulations is PMC 5.04.460;

SECTION 52: Section 8.36.050 subdivision (D)(1)(b) of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(b) Abandoned, inoperative, unregistered, wrecked or dismantled autos, trucks, trailers, motorcycles, camper boats or other recreational vehicles;

SECTION 53: Subsection (D)(3) of Section 8.36.050 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(3) Property that repeatedly has been the situs of nuisance activity, including but not limited to: disturbing the peace, illegal drug activity, public drunkenness, harassment of passersby, illegal gambling, prostitution, sale of stolen goods, acts of violence, public urination, acts of lewd conduct, unreasonably loud noise, or excessive littering;

SECTION 54: Subsection (F)(2) of Section 8.36.050 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(2) Parking, storing or keeping of any recreational vehicle, trailer, boat, or camper within that area of a residential lot customarily considered to be the front yard. The front yard area does not include the driveway. For purposes of this subsection only, the driveway shall be limited to:

SECTION 55: Section 8.36.050 subdivision (F)(8) of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(8) Inoperable, unregistered, or abandoned motor vehicles stored for unreasonable periods on the premises and causing depreciation of nearby property values;

SECTION 56: Section 8.40.015 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

The following definitions shall apply to this chapter:

“Building Official” means the City Building Official, or his designee, who shall possess all statutorily mandated certifications to enforce state building and construction codes.

“Certificate of compliance” means a certificate issued by the Building Official for residential rental unit properties, certifying compliance with this chapter and the housing and property maintenance standards of the City of Palmdale.

“Frequency upgrade” means modifying the inspection frequency to extend the length of time between re-registration and renewal of certificate of compliance of a residential rental unit.

“Housing and property maintenance standards” means the health, safety, and technical construction codes as amended, adopted and incorporated by reference in Chapters 8.04 and 8.08 PMC and in the property maintenance standards set forth in Chapter 8.36 PMC.

“Inspection frequency” means the length of time between inspections for renewal of certification of residential rental units.

“Maintenance request log” means the log required to be maintained by the owner or manager of a residential rental unit, which shall record all tenant requests for repairs, the

time estimated at the time of the request for repairs to be completed, and the completion date of the repairs.
"Major violation" shall mean any one or more of the following violations:

(A) Heating system not fully operational at any time between October and May of the following year.

(B) Hazardous code violations, including any one or more of the following:
(1) Exposed electrical wiring;
(2) Collapsed ceiling or walls caused by water leakage;
(3) Sewage leakage into walls, floors or onto the ground;
(4) Structural damage resulting in the building being determined by the Building Official to be unsafe;
(5) Fire alarm system not fully operational;
(6) Firewalls damaged or not maintained.

(C) Failure to post current and accurate emergency contact information.

"New construction" means construction of a property that was completed within the last five years of that property being subject to Section 8.40.020's registration requirement.

"Noncompliance with notice and order" means that the owner, his authorized agent, or other responsible party does not make required repairs as provided in notice and order from the Building Official.

"Other violations" means any violation other than those defined as a major violation.

"Owner" means the person or entity identified and listed as having title to the residential rental unit by the latest property tax assessment roll maintained by the Los Angeles County Assessor.

"Partners Against Crime (PAC) certified property" shall mean a property containing one or more residential rental units certified to meet the requirements of the City's PAC program.

"Property management posting" means a sign required to be posted and maintained at all times which shall include the address and location to obtain repair requests and a current 24-hour emergency phone number. The sign shall be posted close to the main entrance in an area accessible and visible to the general public, or as may otherwise be approved in writing by the Building Official.

"Repair request form" means a two-part form the owner of a property must provide to all tenants. The form shall indicate the address the form is to be delivered to for repair requests and an area for the manager or owner to sign the receipt of the repair request. The owner shall provide a copy of the request to the tenant.

"Residential rental unit" means a rented or leased dwelling, including but not limited to Primary Dwelling, Single-Family Dwelling, Multi-Family Dwelling or Multi-Family Residential, an Accessory Dwelling Unit, Junior Accessory Dwelling Unit, or any other rented or leased property, or portion thereof, for habitation, regardless if it is owner occupied as well, including but not limited to mobile homes situated on private land, rooming houses, boarding houses and single room occupancies.

SECTION 57: Section 8.40.030 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

All rental properties shall be inspected for compliance with the City of Palmdale housing and property maintenance standards. The owner shall schedule an inspection with the Building and Safety Department within 60 days of the Rental Registration completion and shall provide access to the complete property for the inspection at the scheduled time. Additionally, the owner shall provide access to the complete property at any other time within 10 working days of the Building Official's request. The Building Official at his discretion may require inspections by other City departments and/or Los Angeles County and/or California State enforcing agencies, including, but not limited to, the Los Angeles County Health Department and Los Angeles County Fire Department.

It shall be the owner's responsibility to reschedule an inspection for work performed to remedy any violations as set forth in 8.04.200 SECTION 103 - Violations and Penalties, in the Palmdale Municipal Code within 30 days of a correction notice from the Building Officials Agent. Failure to reschedule within 30 days will result in a cancellation of the rental registration.

SECTION 58: Section 8.40.035 subdivision (B)(6) of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(6) A valid City business license has been issued to the property owner for the residential rental units covered under the certificate of compliance.

SECTION 59: Section 8.40.035 subdivision (C) of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

(C) Issuance of a certificate of compliance shall not constitute a guarantee or warranty of the habitability or complete compliance with the City housing and property maintenance standards, and the occupant of any residential rental unit shall not rely on the certificate of compliance as such a guarantee or warranty. The certificate of compliance shall contain a notice to this effect. The City shall not assume any liability to any person by reason of the inspections required by this chapter or the issuance of a certificate of compliance. Certificates of compliance shall expire on the expiration date shown on the certificate and shall be renewed prior to such date. The Building Official shall determine the expiration dates of certificates of compliance and inspection frequency based on the nature of violations found during the residential rental unit inspections, the following

registration and inspection frequency schedule, in conjunction with his review of past compliance violations within the preceding 12 months.
Registration and Inspection Frequency Schedule

Single-family or detached
New construction – Certificate of occupancy issued within the preceding six months:

No registration fee

Five years

No violations

Five years

Violations, but no major violations or failure to register before expiration of the certification of compliance, found within preceding year; all violation corrections completed within 30 days after notice by Building Official.

Three years

Major violations found, or other violations found but all violation corrections not completed within 30 days after notice by Building Official:

One year

Multifamily – Two units and above
New construction – Certificate of occupancy issued within the preceding six months:

No registration fees

Five years for PAC certified complexes, three years for non-PAC certified complexes
PAC certified property, with no major violations found; all violation corrections completed within 30 days after notice by Building Official; maintenance logs current:

Five years

Not more than one major violation found; all violation corrections completed within 30 days after notice by Building Official; maintenance logs current:

Three years

Major violations found, or other violations found but all violation corrections not completed within 30 days after notice by Building Official:

One year

SECTION 60: Section 8.40.040 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

The owner of a residential rental unit shall apply and pay all required fees not less than 30 days prior to the scheduled expiration of the certificate of compliance. The owner of a residential rental unit property shall re-register and meet all requirements and pay all fees as for a new certificate. Failure to re-register, meet all requirements, and pay all fees required for a new certificate prior to the scheduled expiration of the certificate of compliance will result in the removal of the option for a five-year certificate. Upon re-registration, inspection and the issuance of a new certificate of compliance, the Building Official in the exercise of his discretion may grant a frequency upgrade to extend the inspection frequency one level; however, if all of the following actions are taken and certified to, upon his approval and in the exercise of his discretion, the Building Official may grant a frequency upgrade to extend the inspection frequency two levels:

(A) The property is a Partners Against Crime (PAC) certified property;

(B) All heating and air conditioning systems have been inspected, repaired and serviced by a licensed mechanical contractor, who shall submit a signed letter certifying to that effect;

(C) All residential rental units shall have code compliant smoke detectors installed in all bedrooms and hallways to the bedrooms;

(D) Ground fault circuit interrupter (GFCI) receptacles have been inspected, repaired and/or installed within six feet of all sinks and tubs/showers within all the units.

SECTION 61: Section 8.40.060 of Title 8 of the Palmdale Municipal Code is hereby amended to read as follows:

When ownership of a residential rental unit property changes:

(A) the new owner shall notify the Building Official within 60 days;

(B) any valid and current certificate of compliance for that residential rental unit under Section 8.40.035 shall automatically transfer from the old owner to the new owner unless the Building Official is not provided timely and proper notice pursuant to 8.40.060(A); and

(C) all required property postings under Section 8.40.035(B)(4) shall be updated.

SECTION 62: Section 9.04.040 is hereby added to Chapter 9.04 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.04.040 Annoying and Harassing Contacts to City.
No person shall contact the City's employees, representatives, and agents, via telephone or other electronic communication with the intent to annoy or harass, including making repeated telephone calls, using obscene language or addressing another person in any way that is threatening, or making false or outlandish statements.

SECTION 63: Section 9.04.050 is hereby added to Chapter 9.04 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.04.050 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

SECTION 64: Section 9.04.060 is hereby added to Chapter 9.04 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.04.060 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to abatement procedures prescribed in PMC Chapter 8.36.

SECTION 65: Section 9.04.070 is hereby added to Chapter 9.04 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.04.070 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030

SECTION 66: Chapter 9.11 is hereby added to Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

Chapter 9.11

PUBLIC URINATION AND DEFECATION

Sections:
9.11.010 Prohibition.
9.11.020 Enforcement.

9.11.030 Public Nuisance.
9.11.040 Penalties.

9.11.010 Prohibition.

It is unlawful for any person to urinate or defecate in a public place or publicly owned property other than a restroom, or in a place open to public view, or upon the private property of another without the consent of the owner or person in lawful possession.

9.11.020 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter.

9.11.030 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36. The City may enforce any violation of this Chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.11.040 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

SECTION 67: Section 9.12.020 of Title 9 of the Palmdale Municipal Code is hereby amended to read as follows:

9.12.020 Public Consumption of Liquor.

(A) Drinking in Public.
No person shall drink any alcoholic beverage upon any public street, alleyway, sidewalk or parkway, or in any public building, public lavatory, auto park, or lobby or entranceway to any building within the City.

(B) Possession of Open Container.

(1) No person who has in his or her possession any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, shall enter, be, or remain in

any public area, including, but not limited to, any roadway, sidewalk, parking lot, or on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, or on any area immediately adjacent to the licensed and posted premises, or on the premises of, or immediately adjacent to, any business not licensed to sell or consume alcoholic beverages.

(2) (2) As used in this Section, "posted premises" means those premises which are subject to licensure under any retail package off-sale alcoholic beverage license, the parking lot immediately adjacent to the licensed premises and any public sidewalk immediately adjacent to the licensed premises on which clearly visible notices indicate to the patrons of the licensee and parking lot and to persons on the public sidewalk, that the provisions of this Section are applicable. This Section does not apply to possession an alcoholic beverage on-site of a properly licensed facility in compliance with State law.

(C) Nothing in this Section prohibits drinking in public or having possession of an open container where the location of such acts is subject to a valid city approval for such acts, such as special event permit, where such actions have been expressly allowed by the City.

SECTION 68: Article VIII Public Nuisance and Section 9.12.190 are hereby added to Chapter 9.12 of Title 9 of the Palmdale Municipal Code, and are to read in their entirety as follows:

Article VIII. Public Nuisance

9.12.190 using Public Nuisances While Under the Influence.

(A) Prohibition. It shall be unlawful for any person to cause a public nuisance while under the influence. A “public nuisance” shall have the meaning set forth in PMC section 8.36.050.

(B) As used in this Article, “under the influence” shall mean impairment, to any degree, of an individual's ability to perform the activity in question as a result of the use of alcohol, drugs, or a combination of both.

(C) Penalty. Violations of any provision of this Article shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Article occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

(D) Public Nuisance. Any violation of this Article shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36. The City may enforce any violation of this Article by any and all means available by law, including, but not limited to, civil enforcement through

such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

SECTION 69: Section 9.12.080 of Title 9 of the Palmdale Municipal Code is hereby amended to read as follows:

9.12.080 Penalties.

Violations of any provision of this Article shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Article occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

SECTION 70: Section 9.16.050 is hereby added to Chapter 9.16 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.16.050 Fighting in Public Prohibited.

It is unlawful for any person to engage in any physical fight, disorderly conduct, or altercation with any other person on any public property or upon the premises of another within the City, while in public view.

SECTION 71: Section 9.16.060 is hereby added to Chapter 9.16 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.16.060 Fighting on Public Property Prohibited.
It is unlawful for any person to engage in any physical fight, disorderly conduct, or altercation with any other person on any public property or upon any public premise owned or operated by the City.

SECTION 72: Section 9.16.070 is hereby added to Chapter 9.16 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.16.070 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

SECTION 73: Section 9.16.080 is hereby added to Chapter 9.16 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.16.080 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to abatement procedures prescribed in PMC Chapter 8.36.

SECTION 74: Section 9.16.090 is hereby added to Chapter 9.16 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.16.090 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030

SECTION 75: Section 9.24.040 is hereby added to Chapter 9.24 of Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

9.24.040 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

SECTION 76: Chapter 9.51 is hereby added to Title 9 of the Palmdale Municipal Code, and is to read in its entirety as follows:

Chapter 9.51
AGGRESSIVE PANHANDLING

Sections:
9.51.010 Purpose and Intent.
9.51.020 Definitions.
9.51.030 Prohibition Against Aggressive Panhandling.
9.51.040 Enforcement.
9.51.050 Public Nuisance.
9.51.060 Penalties.

9.51.010 Purpose and Intent.

(A) It is the intent of the council in enacting the ordinance codified in this Chapter to preserve and improve the quality of life for those in the City, and to protect the safety of the general public against certain abusive conduct of persons engaged in aggressive panhandling by imposing reasonable restrictions on aggressive, intrusive, or unsafe panhandling while respecting the constitutional rights of free speech for all citizens.
(B) This Chapter is not intended to, and does not, prohibit non-aggressive panhandling and is limited to aggressive panhandling on public property.

(C) Aggressive and intrusive panhandling includes unwanted physical contact of pedestrians and others or the intentional blocking of pedestrian and vehicular traffic. The City Council finds that an increase in aggressive panhandling in the City has become extremely disturbing and disruptive to residents and businesses, and contributes to the loss of access to and enjoyment of public places, and to an enhanced sense of fear, and disorder. Aggressive panhandling unquestionably threatens the public's safety and welfare. Aggressive panhandling also undermines the public's inherent right to use and enjoy public places without being accosted by or be in reasonable apprehension of persons demanding money or goods in a forceful manner. The actions of individuals engaged in aggressive panhandling likewise can create a climate of intimidation and anxiety among members of the public, who when confronted, reasonably and legitimately fear harm if they refuse to give in to the solicitations of individuals engaged in this type of conduct. Aggressive panhandling also reflects behaviors that are otherwise illegal, such as assaulting persons, and is unrelated to the content of speech, and these regulations are in no way intended to regulate in any manner the content of speech.

(D) Aggressive panhandling usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrians. Such activity often carries with it an implicit threat to both person and property.

(E) The City Council further finds that restricting aggressive panhandling on public property will provide a balance between the rights of panhandlers and the rights of persons who wish to decline or avoid such aggressive panhandlings and will help avoid or diminish the threat of violence in such unwarranted and unavoidable confrontations while allowing all members of the public to peacefully utilize and enjoy public property.

(F) The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to very specific conduct occurring on public property and focused to serve a substantial governmental interest. Furthermore, in enacting this legislation, the City Council recognizes the inherent availability of warnings and alternative administrative and civil remedies which may be appropriate remedies for violations of this law.

9.51.020 Definitions.

As used in this Chapter, the terms listed below shall have the meaning assigned them:

(A) "Aggressive panhandling" means any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, if that conduct is likely to cause a reasonable person to:

(a) Fear bodily harm to oneself or to another, damage to or loss of property, or

(b) Otherwise be intimidated into giving money, goods, or other things of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact in the course of soliciting, asking or begging; or

(4) Persisting in closely following or approaching a person, after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the panhandler.

(B) "Bona fide charity" or "charity" means any social, religious, educational, sports, arts, or other similar bona fide non-profit organization not engaged in any criminal activity or enterprise for which financial donations are collected.

(C) "Panhandling" means to ask for or solicit money, property, or other favor, regardless of value.

(D) The definitions set forth in PMC Chapter 1.20 are also applicable to this Chapter.

9.51.030 Prohibition Against Aggressive Panhandling.

(A) It shall be unlawful for any person to engage in any aggressive panhandling on any public property, including any City park, City building, and public street, highway, sidewalk, or public right-of-way.

(B) This Chapter does not apply to any bona fide charity or person that engages in panhandling that is not aggressive, as defined in this Chapter.

(C) This Chapter does not apply to protected speech activities or other activity protected by law.

9.51.040 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.51.050 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36. The City may enforce any violation of this Chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.51.060 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

SECTION 77: If any section, subsection, paragraph, sentence, clause or phrase of these provisions of the Palmdale Municipal Code is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of the provisions of the Palmdale Municipal Code. The City Council declares that it would have adopted these provisions of the Palmdale Municipal Code, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 78: This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 79: The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this ordinance, the ordinance, or a summary of the ordinance, along with the names of the City Council members voting for and against the ordinance, shall be published in a newspaper of general circulation in the City of Palmdale.

SECTION 80: The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

PASSED, APPROVED and **ADOPTED** this 15th day of November, 2023.

_____

Approved as to form: Laura Bettencourt, Mayor

ATTEST:

_____ _____

William P. Curley, III, City Attorney Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of the City of Palmdale, California, do hereby certify that the foregoing Ordinance was duly introduced, passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the _____ day of _____, 20___ effective on the ____ day of _____, 20___ by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____

Rochelle Scott, Acting City Clerk

EXHIBIT I

REDLINES

1.16.010 Enforcement

(A) The Senior Code Enforcement Officer, Code Enforcement Officer, Community Service Officer, Building Official, Supervising Building Inspector, Senior Building Inspector, Building Inspector, City Engineer, Supervising Public Works Inspector, Peace Officer, Parking Enforcement Supervisor, Parking Enforcement Officer, Public Security Officer, Senior Public Security Officer and Supervising Public Security Officer classifications of employees of the City as may hereafter be specifically designated by ordinance shall have the power, authority and immunity, as set forth in Section 836.5 of the California Penal Code, to make arrests without a warrant whenever such officers or employees have reasonable cause to believe that the person to be arrested has committed a violation in their presence of an ordinance or statute which such officers or employees have the duty to enforce.

3.44.140 Denial, revocation, suspension of business license; procedures to contest and effect.

~~(1) No business license shall knowingly be issued or renewed when, at the time of making application for any license, or renewal thereof, the applicant is indebted to the City for any unpaid license tax, license fees, transient occupancy taxes, or unpaid invoices for any rates, fees or charges imposed pursuant to this code. The Director of Finance or designee may enter into an agreement with any person so indebted to the City to establish a payment schedule for such indebtedness and any delinquencies and interest thereon. In such agreement, the debtor shall acknowledge such debt to the City and shall agree that if any default occurs in the payment of any installment agreed to be paid thereunder, the entire amount to be paid shall become immediately due and payable, and that, if suit is brought to enforce collection of the amount agreed to be paid under such agreement, the debtor will pay all costs of suit incurred by the City, including reasonable attorneys' fees.~~

~~(2) If such an agreement is executed, and all other provisions of this Chapter are complied with, a license for the current or ensuing license period may be issued to such person upon payment of the license tax prescribed for the current or ensuing license period, together with any penalties thereon.~~

(A) Grounds for Denial, Revocation, Suspension

(1) Grounds for Denial; Business Activities Involving First Amendment Activities. Neither the Director of Finance or designee nor the City Council shall approve an application for a business license for a business activity primarily involving First Amendment activities if any of the following findings are made:

(a) The building, structure, premises, or the equipment used to conduct the business activity fails to comply with all applicable health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City or there are fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity; provided, however, that this subsection shall not be construed to require that the applicant actually be in compliance with such laws or have paid such penalties at the time set for review and approval. The Director of Finance or designee nor the City Council or the City Council, as applicable, may approve a business permit and condition its operative date upon the later submission by the applicant to the Director of Finance or designee of a certificate of occupancy issued by the Division of Building and Safety or other satisfactory evidence that the business activity is then in compliance with all such applicable laws or proof of payment of such penalties;

(b) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for the business license or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(c) The business is prohibited by any local or state law, statute, rule or regulation, or is prohibited in the particular location or zone by any law, statute, rule, or regulation; or

(d) The Director of Finance or designee or the City Council City Council has made the findings and determination as specified in PMC Section 5.04.185 relating to an applicant for a license for a proposed business activity involving First Amendment activities.

(2) Grounds for Denial; Business Activities Not Involving First Amendment Activities. Neither the Director of Finance or designee nor the City Council shall approve an application for a business license for a business activity not primarily involving First Amendment activities if any of the following findings are made:

(a) The building, structure, premises, or the equipment used to conduct the business activity fails to comply with all applicable health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City or there are fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity; provided, however, that this subsection shall not be construed to require that the applicant actually be in compliance with such laws or have paid such penalties at the time set for review and approval. The Director of Finance or designee or the City Council, as applicable, may approve a business license and condition its operative date upon the later submission by the applicant to the Director of Finance or designee of a certificate of occupancy issued by the Division of Building and Safety or other satisfactory evidence that the business

activity is then in compliance with all such applicable laws or proof of payment of such penalties;

(b) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for the business license or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(c) The business is prohibited by any local or state law, statute, rule or regulation, or is prohibited in the particular location or zone by any law, statute, rule, or regulation;

(d) The City Council has made the findings and determination as specified in PMC 5.04.185 relating to an applicant for a license for a business activity not involving First Amendment activities.

(3) Grounds for Revocation or Suspension; Business Activities Involving First Amendment Activities. After the hearing, the City Council may condition, modify, suspend or revoke a business license for any business activity required to be permitted under this chapter if the City Council finds that one or more of the following conditions exist:

(a) That the business activity including the building, structure, premises or equipment used in the conduct of the business does not comply with any health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City;

(b) That the licensee, or any employee, agent or manager of the licensee, has violated any federal or state statute or any ordinance or regulation of the City in the course of exercising any rights under the business license which is being considered for revocation;

(c) That the licensee, or any employee, agent or manager of the licensee, has knowingly made any false, misleading or fraudulent statement of material fact in the application for permit, or in any report or statement required to be filed with the Director of Finance or designee or the City Council;

(d) That the licensee, or any employee, agent or manager of the licensee, has published, uttered or disseminated any false, deceptive or misleading statements or advertisements in connection with the licensed business;

(e) That the licensee has failed or refused to notify the Director of Finance or designee of any change in facts as required by this chapter within 10 days after such change;

(f) That the licensee, or any employee, agent or manager of the licensee, has violated any conditions or restrictions of the business license;

(g) That the licensee, or any employee, agent or manager of the licensee, has allowed, or failed to prevent, the use of the business as a base for unlawful or criminal activity, including, but not limited to, solicitation, prostitution or drug trafficking;

(h) That there are any fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity; or

(i) The licensee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law.

(4) Grounds for Revocation or Suspension; Business Activities Not Involving First Amendment Activities. After the hearing, the City Council may condition, modify, suspend or revoke a business license for any business activity required to be permitted under this chapter if the City Council finds that one or more of the following conditions exist:

(a) That the business activity including the building, structure, premises or equipment used in the conduct of the business does not comply with any health, zoning, fire, building and safety, or nuisance prevention laws of the State or of the City;

(b) That the licensee, or any employee, agent or manager of the licensee, has violated any federal or state statute or any ordinance of the City in the course of exercising any rights under the business license which is being considered for revocation;

(c) That the licensee, or any employee, agent or manager of the licensee, has been found to have committed a crime of moral turpitude which bears a substantial relationship to the conduct of the business activity for which the business license is being considered for revocation;

(d) That the licensee, or any employee, agent or manager of the licensee, has knowingly made any false, misleading or fraudulent statement of material fact in the application for permit, or in any report or statement required to be filed with the Director or designee or the City Council;

(e) That the licensee, or any employee, agent or manager of the licensee, has published, uttered or disseminated any false, deceptive or misleading statements or advertisements in connection with the operation of the licensed business;

(f) That the licensee has failed or refused to notify the Director or designee of any change in facts as required by this Chapter within 10 days after such change;

(g) That the licensee, or any employee, agent or manager of the licensee, has violated any conditions or restrictions of the business license;

(h) That the licensee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law;

(i) That the licensee, or any employee, agent or manager of the licensee, has violated any rule or regulation adopted by the City Council or any other governmental agency relating to the licensee's business;

(j) That the licensee has conducted the licensed business in a manner contrary to the public health, safety and welfare; or

(k) That there are any fees, fines, or other penalties owing the City in connection with the business activity including the building, structure, premises, or the equipment used to conduct the business activity.

(B) Hearing to Contest Denial, Revocation, Suspension

(1) Initiation of Hearing. The determination of whether a license should be denied, revoked, or suspended shall be initiated by a written statement of the grounds in Section 3.44.140(A) have been found. Such statement may be initiated by any department or agency required to review or inspect the business activity for compliance with applicable regulations. Such statement shall be submitted to the Director of Finance or their designee. The City shall give written notice to the applicant/licensee of the decision to deny, revoke, or suspend to the address on the operative application or license via first-class mail. The applicant/licensee may request a hearing by filing a request for a hearing on a City-approved form with the Office of the City Clerk, 38300 Sierra Highway, Palmdale, CA 93550 and must provide the reasons why the grounds in Section 3.44.140(A) have not been established within 20 calendar days from the issuance date of the notice. If the Office of the City Clerk does not receive the request in the required period, the applicant/licensee shall have waived the right to a hearing and the determination shall be deemed confirmed and final.

(2) Notice of Hearing. If a timely and complete request for hearing is made, the City will set a hearing before the City Council for the City Council to determine whether grounds in Section 3.44.140(A) have been established to support the City's denial, revocation, or suspension. Written notice of the date, time, and location of the hearing shall be given to the applicant/licensee not less than 10 days prior to the hearing by first class mail. Service of this notice is deemed complete at time of mailing. The failure of an applicant/licensee

to receive a properly addressed notice shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to this Section. The hearing will be conducted within 60 days of the date a timely and complete request is received by the Office of the City Clerk unless otherwise agreed to by the applicant/licensee and the City.

(3) Procedure for Hearing.

(a) Right to witnesses and submission of documentary evidence. The applicant/licensee and the City shall have the right to bring witnesses to testify whether the grounds in Section 3.44.140(A) have been established and cross-examine each other's witnesses. The applicant/licensee and the City also have the right to submit in advance of the hearing—no later than 3 calendar days prior to the date set for hearing—written argument and documentary evidence on whether the grounds in Section 3.44.140(A) have been established. Such submission shall be made by first class mail unless otherwise agreed to by the applicant/licensee and the City, such as via email. Failure to receive said written material shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to this Section.

(b) Procedure and rules of evidence. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Oral evidence shall be taken only on oath or affirmation. The City bears the burden of proof to establish the grounds in Section 3.44.140(A) by a preponderance of evidence. An applicant/licensee may bring an interpreter to the hearing provided there is no expense to the City therefor. The City Council may question any person who presents evidence or who testifies at any hearing. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing in accordance with PMC 2.08.090.

(c) Decision. The City Council shall issue its decision in writing promptly and notice of it must be made via first-class mail to the applicant/licensee and City. The decision shall contain a determination of the issues presented, including the evidence supporting whether the grounds in Section 3.44.140(A) were established and the applicable grounds in Section 3.44.140(A).

(4) Effect of Revocation or Suspension.

(a) No refunds of any business license fees, taxes, or other sums paid shall be made to any licensee upon revocation or suspension of a business license.

(b) Following revocation of any business license under this Section, no business license to conduct the same business activity shall be issued to the same person for a period of one year.

(c) Whenever a business license is suspended or revoked, the Director of Finance or their designee shall take into possession the business license for the subject business activity. The licensee shall surrender the business license and license stickers, or similar evidence of a license, to the Director of Finance or their designee.

(d) Upon revocation or suspension of a business license, the licensee shall immediately cease operation of the business activity. Except as otherwise provided, if the license is suspended, the licensee may resume operation upon expiration of the suspension period.

(5) Judicial Appeal. The determination issued by the City Council shall be deemed a final order and may be judicially reviewed pursuant to California Code of Civil Procedure Section 1094.6. There is no right to a further administrative appeal.

(C) No License Issued or Renewed where Applicant is Indebted to City

(1) No business license shall knowingly be issued or renewed when, at the time of making application for any license, or renewal thereof, the applicant is indebted to the City for any unpaid license tax, license fees, transient occupancy taxes, or unpaid invoices for any rates, fees or charges imposed pursuant to this code. The Director of Finance or designee may enter into an agreement with any person so indebted to the City to establish a payment schedule for such indebtedness and any delinquencies and interest thereon. In such agreement, the debtor shall acknowledge such debt to the City and shall agree that if any default occurs in the payment of any installment agreed to be paid thereunder, the entire amount to be paid shall become immediately due and payable, and that, if suit is brought to enforce collection of the amount agreed to be paid under such agreement, the debtor will pay all costs of suit incurred by the City, including reasonable attorneys' fees.

(2) If such an agreement is executed, and all other provisions of this Chapter are complied with, a license for the current or ensuing license period may be issued to such person upon payment of the license tax prescribed for the current or ensuing license period, together with any penalties thereon.

5.04.040 Definitions

(N) "Sexually oriented business" shall mean any one of the following:

(1) Any business wherein the preponderant business is the offering of services, materials, goods and/or products which are characterized by an emphasis on matter depicting, describing, or in relation to “nude” or “semi-nude” persons or “specified sexual activities,” as defined in Section ~~92.05.B.2, 3 and 5~~17.92.010 of the Palmdale zoning ordinance, for observation by patrons therein. Such businesses shall include, but not be limited to, an adult bookstore, adult video store, picture arcade showing adult entertainment pictures, adult motion picture theater or other similar businesses; or

(3) Any business, having as a portion of its goods for sale, products which replicate or are designed to simulate “specified anatomical areas,” as defined in Section ~~92.04.B.4~~17.92.010 of the Palmdale zoning ordinance, to cause sexual excitement thereof. Such business shall include, but not be limited to, a sexual novelty store or other similar businesses.

5.04.050 Permits required

~~(D) Managers. Where the provisions of this chapter governing particular business activities require a manager, such individual, unless he or she is the person to whom the permit for the business activity is issued, must obtain a manager’s permit and pay the required fee therefor. The application for a manager’s permit should be on a form provided by the City and shall, to the extent feasible, be submitted concurrently with the application for business permit required by PMC 5.04.130. (Ord. 898 § 2, 1990)~~

5.04.150 Businesses requiring a business permit

(A) No person shall commence, conduct or purport to commence or conduct the following business activities without a valid business permit:

(1) Adult-oriented businesses°;

~~(2) Ambulances and ambulance drivers+;~~

~~(3) Billiards;~~

~~(4) Bingo;~~

~~(5) Carnivals and concessions°+;~~

~~(6) Dance halls and dances°;~~

(7) Entertainment°;

~~(8) Introductory services°;~~

~~(9) Fortunetelling;~~

(10) Game arcades;

(11) Gun dealers;

~~(12) Health clubs;~~

~~(13) House and street numbering;~~

~~(14) Hypnotist+;~~

~~(15) Locksmith;~~

(16) Massage establishments and massage technicians°;

~~(17) Motion picture theater+;~~

(18) Pawnbrokers and secondhand dealers;

(19) Sidewalk vending;

~~(20) Reserved;~~

~~(21) Private patrol service;~~

~~(22) Family entertainment center+°;~~

~~(23) Swap meet;~~

~~(24) Taxicabs and taxicab drivers+;~~

(25) Tobacco/smoking product retailer;

~~(26) Tow trucks+;~~

(27) Mobile vending.

~~+ Indicates that such business activity is subject to insurance or bond requirements.~~

~~º Indicates that such business activity requires a permitted manager pursuant to PMC 5.04.050.~~

5.04.170 Review and approval

(A) Responsibility. The responsibility for approving business permit applications shall be as follows:

(1) Business Permit Applications Which Do Not Require Hearings. These business permit applications shall be subject to the approval of the Director as the reviewing authority. Any person may appeal the Director's decision on the application in a manner consistent with the requirements of PMC ~~5.04.340~~5.04.280, et. sequentes. The timely filing of an appeal shall entitle the aggrieved party to a hearing.

5.04.210.Effect of business permit denial

~~(B) Preconditions to Approval. Before any business permit is issued, the reviewing authority shall ensure that the applicant has agreed to abide by all the conditions and restrictions imposed by this chapter on the particular business involved.~~

(B) Appealability. The denial of an application by the Director may be appealed to the City Council in a manner consistent with PMC 5.04.280, et. sequentes.

5.04.240 Insurance and bond requirements

Section 5.04.240 Reserved.

~~(A) Permit Validity and Grounds for Suspension. Whenever the provisions of this chapter require an applicant for any business permit to procure, post or maintain in effect any bond, undertaking, deposit, or policy of insurance, any business permit issued is valid only while such bond, undertaking, deposit, or policy of insurance is in full force and effect. The business permit shall automatically be suspended without notice if at any time such bond, undertaking, deposit, or policy of insurance is not in full force and effect. The Director shall notify the permittee in writing of any suspension pursuant to this section. Within 10 days thereafter, the permittee may request in writing a hearing before the City Council. The City Council shall conduct a hearing in a manner consistent with PMC 5.04.360 and, as warranted by the evidence received at the hearing, may revoke the permit or terminate the suspension and restore the permit. If the permittee does not request a hearing, the permit is automatically revoked at the end of 10 days following the notification of suspension.~~

~~(B) Cancellation of Insurance or Bond. Except as otherwise provided, a policy of insurance or a bond or undertaking required under this chapter shall not be accepted unless it provides that it shall not be canceled until 30 days after the insurer or surety gives notice thereof to the Director. If a permittee learns that such a bond, undertaking or policy of insurance will be or has been canceled, such permittee shall notify the Director within three days of such notice. If a new bond, undertaking or policy of insurance acceptable to the Director is filed before the old one is canceled or expires, then the permit will continue in full force. Any employee, officer or department informed of any modification or cancellation of any insurance policy, undertaking or bond required under this chapter shall immediately notify the Director of such modification or cancellation.~~

~~(C) Contents of Insurance Policy. Except as otherwise provided, in every instance where an insurance policy is required for the permitting of a particular business, such insurance policy shall comply with the following requirements unless the City Council, upon application, notice and hearing, directs otherwise:~~

~~(1) It shall be primary and not contributing to any other insurance maintained by the City;~~

~~(2) It shall name the City, its officers, agents and employees, as additional insureds;~~

~~(3) Its liability limits shall be as specified in the regulations pertaining to the specific business;~~

~~(4) It shall bear a deductible in an amount approved by the Director;~~

~~(5) It shall be issued by an insurer approved by the City; and~~

~~(6) It shall be endorsed so as to provide the Director with 30 days' prior notice of any cancellation or modification of the policy.~~

~~(D) Indemnification. Whenever this chapter requires a business permit applicant or permittee to indemnify the City, the applicant or permittee shall be required to execute an indemnification statement in substantially the following form:~~

~~It shall be a condition of this permit issued under the Business Regulation Ordinance that the permittee agrees to indemnify, hold harmless, and defend the City, its City Council, and each member thereof, and every officer, agent and employee of the city, from any and all liability or financial loss resulting from any suits, claims, losses, or actions brought by any person, and from all costs and expenses of litigation, including attorney's fees, by reason of injury to any person, including, but not limited to, officers and employees of the permittee, performed under and pursuant to this permit, and any and all activities,~~

~~operations, and conditions in any manner connected therewith or pertaining thereto. Such indemnity shall include, but not be limited to, any and all liabilities, demands, claims, damages, losses, costs and expenses caused or alleged to have been caused by any negligent or other act of this permittee.~~

5.04.250 Business permit renewal

(E) Denial of Permit Renewal. If the City has received notice of any of the following upon the filing of any permit renewal application, the application for renewal may be denied, subject to the permittee's right to appeal as provided for in PMC ~~5.04.340~~5.04.280, et. sequentes.

5.04.270 Denial, non-renewal, modification, suspension or revocation

~~Any business permit issued by the City may be conditioned, modified, suspended or revoked for cause by the City Council pursuant to PMC 5.04.280 et seq. (Ord. 898 § 2, 1990)~~

(A) The determination of whether a permit should be denied, not renewed, modified, suspended, or revoked shall be initiated by a written statement evidencing that the grounds in Section 5.02.200 or 5.04.310, as the case may be, have been found. Such statement may be initiated by any department or agency required to review or inspect the business permit and/or activity for compliance with applicable regulations. Such statement shall be submitted to the Director. The City shall give written notice to the applicant/permittee of the decision to deny, not renew, modify, suspend, or revoke to the address on the operative permit paperwork via first-class mail.

(B) Any applicant/permittee aggrieved by the City's denial of a business permit, non-renewal of a business permit, or the City's modifying, suspension or revocation of a business permit may challenge such decision pursuant to PMC 5.04.280 et seq.

5.04.280 ~~Revocation – Initiation of hearing~~ Hearing to contest modification, suspension or revocation – Initiation of hearing

~~A hearing to determine whether an existing permit should be conditioned, modified, suspended or revoked shall be initiated by a written statement of charges. Such statement may be initiated by any department or agency required to review or inspect the permitted business activity for compliance with City regulations. Such statement shall be submitted to the Director. (Ord. 898 § 2, 1990)~~

The applicant/permittee may request a hearing by filing a request for a hearing on a City-approved form with the Office of the City Clerk, 38300 Sierra Highway, Palmdale, CA 93550 and must provide the reasons why the grounds in Section 5.02.200 or 5.04.310, as the case may be, have not been established within 20 calendar days from the issuance date of the notice. If the Office of the City Clerk does not receive the request in the required period, the applicant/permittee shall have waived the right to a hearing and the determination shall be deemed confirmed and final.

5.04.290 Revocation – ~~Notice to permittee~~ Hearing to contest modification, suspension or revocation – Notice of hearing.

~~If the Director determines that a hearing is warranted, written notice of the hearing shall be given to the permittee not less than 10 days prior thereto. (Ord. 898 § 2, 1990)~~

If a timely and complete request for hearing is made, the City will set a hearing before the City Council for the City Council to determine whether grounds in Section 5.02.200 or 5.04.310, as the case may be, have been established to support the City's determination. Written notice of the date, time, and location of the hearing shall be given to the applicant/permittee not less than 10 days prior to the hearing by first class mail. Service of this notice is deemed complete at time of mailing. The failure of a applicant/permittee to receive a properly addressed notice shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to these applicable sections. The hearing will be conducted within 60 days of the date a timely and complete request is received by the Office of the City Clerk unless otherwise agreed to by the applicant/permittee and the City.

5.04.300 Hearing to contest modification, suspension or revocation – Procedure for hearing.

(A) Right to witnesses and submission of documentary evidence. The applicant/permittee and the City shall have the right to bring witnesses to testify whether the grounds in Section 5.02.200 or 5.04.310, as the case may be, have been established and cross-examine each other's witnesses. The applicant/permittee and the City also have the right to submit in advance of the hearing—no later than 3 calendar days prior to the date set for hearing—written argument and documentary evidence on whether the grounds in Section 5.02.200 or 5.04.310, as the case may be, have been established. Such submission shall be made by first class mail unless otherwise agreed to by the applicant/permittee and the City, such as via email. Failure to receive said written material shall not invalidate the determination or any hearing, City action or proceeding conducted pursuant to this Section.

(B) Procedure and rules of evidence. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Oral evidence shall be taken only on oath or affirmation. The City bears the burden of proof to establish the grounds in Section 5.02.200 or 5.04.310, as the case may be, by a preponderance of evidence. An applicant/permittee may bring an interpreter to the hearing provided there is no expense to the City therefor. The City Council may question any person who presents evidence or who testifies at any hearing. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing in accordance with PMC 2.08.090.

(C) Decision. The City Council shall issue its decision in writing promptly and notice of it must be made via first-class mail to the applicant/permittee and City. The decision shall contain a determination of the issues presented, including the evidence supporting whether the grounds in Section 5.02.200 or 5.04.310, as the case may be, were established and the applicable grounds in Section 5.02.200 or 5.04.310, as the case may be.

(D) Judicial Appeal. The determination issued by the City Council shall be deemed a final order and may be judicially reviewed pursuant to California Code of Civil Procedure Section 1094.6. There is no right to a further administrative appeal.

5.04.310 Grounds for modification, suspension or revocation of business permit.

~~After the hearing,~~ The City ~~Council~~ may condition, modify, suspend or revoke a business permit for any business activity required to be permitted under this Chapter as provided in Section 5.04.270 if the City finds that one or more of the following conditions exist:

5.04.320 Effect of revocation or suspension.

(A) No refunds of any business permit fees shall be made to any permittee upon revocation or suspension of a business permit.

(B) Following revocation of any business permit ~~for cause~~ under this Chapter, no business license ~~permit~~ to conduct the same business activity shall be issued to the same person for a period of one year.

(C) Whenever a business permit is suspended or revoked, the Director shall take into possession the business license ~~permit~~ for the subject business activity. The permittee shall surrender the business license ~~permit~~ and permit stickers, or similar evidence of a permit, to the Director.

5.04.340 ~~Appeal from Director's decision to City Council~~ Violations; Enforcement; Public Nuisance

~~(A) Filing. Any applicant for a business permit or for the renewal of a business permit who is aggrieved by any decision of the Director may file with the Director a notice of appeal to the City Council within 10 days of the date of mailing of the decision. The notice shall be signed by the appellant or the legal representative of the appellant and shall be sufficient if it states that the appellant appeals from a specified decision or a particular part thereof. The notice of appeal may state briefly the grounds upon which the appeal is based but shall contain no argument, evidence or legal points and authorities.~~

~~(B) Effect of Notice of Appeal. If a timely appeal is filed, the effect of the Director's decision shall be stayed pending the City Council's resolution of the matter unless the Director specifically finds that the public health and safety will be endangered by any such stay.~~

~~(C) Deposit of Estimated Costs. With every notice of appeal filed pursuant to this section, the appellant shall deposit with the Director an amount which the Director estimates will cover the cost of production of a transcript of documentation on the matter, including the record of any hearing conducted by the Director, which resulted in the decision on which the appeal is taken.~~

~~(D) Accounting of Funds. The Director shall keep a permanent and accurate account of all deposits received on appeal. If the actual cost of the transcript exceeds the amount deposited by the appellant, the appellant shall pay the deficiency; if it is less, the Director shall refund the difference to the appellant. (Ord. U-1030 § 6, 1993; Ord. 898 § 2, 1990)~~

(A) Generally. Except as hereafter provided, any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC Section 1.12.030.

(B) False Statements. Any person who knowingly makes any false statement in any application for a business permit or in any report required under this Chapter is guilty of a misdemeanor and punishable as provided for in this code.

(C) Enforcement. The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this Chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative

enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

(D) Public Nuisance. Any violation of this Chapter shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36.

5.04.400 Adult-oriented businesses

(B) Definitions. For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended the following definitions shall apply:

(1) Adult-Oriented Businesses. “Adult-oriented businesses” means any one of the following:

(b) Adult Bookstore, Adult Novelty Store, Adult Video Store. The terms “adult bookstore”, “adult novelty store”, or “adult video store” as used in this Section, is an establishment that has 20 percent or more of its stock in books, magazines, periodicals or other printed matter, adult-oriented merchandise or of photographs, films, motion pictures, video cassettes, slides, tapes, records, DVD, CD-ROM, or other visual or audio representations or any material in digital format, are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas. An adult bookstore, adult novelty store, or adult video store shall not include mail order businesses or wholesale businesses with no patrons on the premises.

(c)Adult Cabaret. The term “adult cabaret” as used in this Section, means a nightclub, restaurant, or similar business establishment which:

(1) ~~regularly~~ features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or

(2) ~~which regularly~~ features persons who appear semi-nude; and/or

(3) shows films, computer-generated images, motion pictures, video cassettes, slides, DVD, CD-ROM, or other visual or audio representations or any material in digital format, or other photographic reproductions and 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(d) Adult Hotel/Motel. The term “adult hotel/motel” as used in this Section, means a hotel or motel or similar business establishment offering public accommodations for any form of consideration which, (1) provides patrons with closed-circuit television transmissions, films, computer-generated images, motion pictures, video cassettes, slides, DVD, CD ROM, or other visual or audio representations or any material in digital format, or other photographic reproductions and 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and (2) rents, leases, or lets any room for less than a 10 hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

~~(e) Adult Motion Picture Theater. The term “adult motion picture theater,” as used in this section, is a business establishment where, for any form of consideration, films, computer-generated images, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.~~

(e) Adult Motion Picture Theater. The term “adult motion picture theater” means any business, other than a hotel or motel which regularly provides closed-circuit viewing to each individual room as a secondary service to its hotel or motel customers, with the capacity for five or more persons where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions in which the predominant character and theme is distinguished or characterized by its emphasis on matters depicting or relating to "specified sexual activities," "specified anatomical areas" or men and/or women in a "state of nudity" or "state of partial nudity" as defined in this section, are regularly shown. This includes, without limitation, showing any such slides, motion pictures or videos by means of any video tape system which has a display, viewer, screen, or a television set. For purposes of this chapter, motion pictures receiving up to an "NC17" rating from a generally recognized movie rating organization shall not be deemed to be included in the definition of an adult motion picture theater.

~~(f) Adult Theater. The term “adult theater,” as used in this section, means a business establishment which for any form of consideration regularly features live performances, for an audience on the premises, which performances either: (1) are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities; and/or (2) regularly feature entertainers who appear semi-nude.~~

(f) Adult live entertainment theater means any place, building, enclosure, or structure, partially or entirely used for "live adult entertainment," as defined in this section, performances or presentations characterized by an emphasis on depicting, exposing,

displaying, or describing or relating to "specified sexual activities," "specified anatomical areas" or men and/or women in a "state of nudity" or "state of partial nudity" for observation by patrons or customers therein. "Live adult entertainment" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, walking, speaking, dancing, acting, posing, simulating, wrestling, or pantomiming, in which the performer(s) expose to public view without opaque covering "specified anatomical areas" or appear in a "state of nudity" or a "state of partial nudity" for any form of consideration.

~~(g) Adult~~ Modeling Studio. The term "~~adult~~ modeling studio" as used in this Section, means a business ~~or other premises or location~~ which provides, for pecuniary compensation, monetary or other consideration, hire or reward, ~~or on a voluntary basis or on a voluntary or otherwise unpaid basis~~, figure models, ~~actors or actresses who,~~ for the purposes of sexual stimulation of patrons, appear either nude or semi-nude or display "specified anatomical areas" to be observed, sketched, photographed, painted, sculpted, or otherwise depicted by persons on the premises. "~~Adult~~ Modeling studio" does not include schools maintained pursuant to standards set by the State Board of Education. "~~Adult~~ Modeling studio" further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, allow, or make available "specified sexual activities".

(3) Adult-Oriented Merchandise. The term "Adult-Oriented Merchandise" as used in the Section, means sexually oriented implements or paraphernalia, ~~such as~~ including, but not limited to dildos; auto sucks; adult-oriented vibrators; edible underwear; benwa balls; inflatable orifices; anatomical balloons with orifices; simulated vaginas, and similar adult-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

(5) Bar. For the purposes of this section, a "bar" is defined as an establishment in which the primary use is the sale of alcoholic beverages for consumption on-site which requires an alcoholic beverage control license (Type 40, 41, 42, 48 or 61) which does not meet the definition of a bona fide restaurant, as defined in Chapter ~~92.07~~17.16 of the Palmdale zoning ordinance.

~~(8) Figure Model. "Figure model," as used in this section, means any person who, for pecuniary compensation, consideration, hire or reward, or on a voluntary or otherwise unpaid basis, poses or appears in an adult modeling studio either nude or semi-nude, displays "specified anatomical areas," or performs "specified sexual activities" to be observed, sketched, filmed, photographed, videotaped, electronically or digitally recorded, painted, drawn, sculpted, or otherwise depicted by persons on the premises,~~

~~cable-casted, web-casted, broadcasted, transmitted to persons or locations off-site, or otherwise provided for sale.~~

(8) Establishment of an Adult-Oriented Business. As used in this Section, to "establish" an Adult-Oriented Business shall mean and include any of the following:

a. The opening or commencement of any Adult-Oriented Business as a new business;

b. The conversion of an existing business, whether or not an Adult-Oriented Business, to any Adult-Oriented Business defined herein;

c. The addition of any of the Adult-Oriented Businesses defined herein to any other existing Adult-Oriented Business; or,

d. The relocation of any such Adult-Oriented Business.

(12) Park. ~~For purposes of this chapter~~ As used in this Section, the term "park" means a park, trail, recreation center, sports complex, golf course, or athletic field within the City which is under the control, operation or management of the City or other public agency.

~~(17) Semi-nude. As used in this section, the term "semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.~~

(17) Religious Institution. The term "religious institution" as used in this Section, is a structure which is used primarily for religious worship and related religious activities.

~~(18) Specified Anatomical Areas. As used herein, "specified anatomical areas" shall mean and include any of the following:~~

~~(a) Less than completely and opaquely covered human (i) genitals or pubic region; (ii) buttocks; and (iii) female breast below a point immediately above the top of the areola; or~~

~~(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or~~

~~(c) Any device, costume, or covering that simulates any of the body parts included in subsection (B)(18)(a) or (b) of this section.~~

(18) School. The term "school" as used in this Section, is any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those

courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

~~(19) Specified Sexual Activities. As used herein, "specified sexual activities" shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering:~~

~~(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;~~

~~(b) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;~~

~~(c) Masturbation, actual or simulated;~~

~~(d) Excretory functions as part of or in connection with any of the other activities described in subsections (19)(a) through (c) of this section.~~

(19) Semi-Nude. As used in this Section, the term "semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.

~~(20) Substantially Enlarged. The term "substantially enlarged" as used in this section means the increase in floor area occupied by an adult-oriented business by more than 10 percent of its floor area as it existed at the time an adult-oriented regulatory permit was issued for the business.~~

(20) Specified Anatomical Areas. As used in this Section, "specified anatomical areas" shall mean and include any of the following:

(a) Less than completely and opaquely covered human: i. Genitals or pubic region; ii. Buttocks; and, iii. Female breast below a point immediately above the top of the areola;

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and,

(c) Any device, costume, or covering that simulates any of the body parts included in subsection (B)(20)(a) or (b) of this section.

(21) Specified Sexual Activities. As used herein, “specified sexual activities” shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;

(b) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;

(c) Masturbation, actual or simulated; or,

(d) Excretory functions as part of or in connection with any of the other activities described in subsections (21)(a) through (c) of this section.

(22) Substantially Enlarged. The term “substantially enlarged” as used in this Section means the increase in floor area occupied by an Adult-Oriented Business by more than 10 percent of its floor area as it existed at the time an Adult-Oriented Regulatory Permit was issued for the business.

(F) Investigation and Action on Application.

(5) The City Council shall grant the application and issue the adult-oriented business regulatory permit upon findings that the proposed business meets the locational criteria of Section ~~92.05.C.1~~17.92.010.C.1 of the City of Palmdale zoning ordinance, and that the applicant has met all of the development and performance standards and requirements of subsection (I) of this section, unless the application is denied for one or more of the reasons set forth in subsection (G) of this section. The permittee shall post the permit conspicuously in the adult-oriented business premises.

(G) Permit Denial.

(1) The City Council shall deny the application for any of the following reasons:

(c) The adult-oriented business does not comply with the zoning ordinance locational standards, Section ~~92.05.C.1~~17.92.010.C.1;

(I) Adult-Oriented Business Development and Performance Standards.

(8) Any adult-oriented business shall comply with the provisions of PMC Section ~~5.04.570~~17.92.010

(W) Existing Adult-Oriented Businesses

~~(1) Any adult-oriented business lawfully operating on the effective date of the ordinance codified in this section in violation hereof shall be deemed a nonconforming use.~~

~~(2) Any adult-oriented business lawfully operating on the effective date of the ordinance codified in this section which becomes nonconforming due to the location requirements enumerated in zoning ordinance Section 92.05(C)(1) shall cease operation, or otherwise be brought into full compliance with the location requirements of this section, not later than 20 years following the effective date of those requirements.~~

~~(3) Any adult-oriented business lawfully operating on the effective date of the ordinance codified in this section which becomes nonconforming due to either the design or performance standards enumerated in subsection (I) of this section shall cease operation, or otherwise be brought into full compliance with the design standards and performance standards of this section, not later than one year following the effective date of the ordinance codified in this section.~~

~~(4) Any adult-oriented business lawfully operating on the effective date of the ordinance codified in this section which becomes nonconforming based upon the definitions enumerated in subsection (B) of this section (Definitions) shall cease operation, or otherwise be brought into full compliance with the definitions of this section, not later than three years following the effective date of the ordinance codified in this section.~~

~~(5) Any adult-oriented business lawfully operating on the date of being annexed by the City which becomes nonconforming due to the location requirements enumerated in zoning ordinance Section 92.05(C)(1) shall cease operation, or otherwise be brought into full compliance with the location requirements of this section, not later than 20 years following the effective date of those criteria.~~

~~(6) Any adult-oriented business lawfully operating on the date of being annexed by the City which becomes nonconforming due to either the design or performance standards enumerated in subsection (I) of this section shall cease operation, or otherwise be brought into full compliance with the design standards and performance standards of this section, not later than one year following the effective date of the ordinance codified in this section.~~

~~(7) An adult-oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of: (i) a residential use or zone within 1,000 feet of the adult-oriented business; or (ii) a park, primary alcohol use, excluding convenience stores, church or school within 1,000 feet of the adult-oriented business.~~

~~This exemption shall only apply if the adult-oriented business is continuous, which means that interruptions cannot exceed six months.~~

~~(8) Any adult-oriented business lawfully operating on the date of being annexed by the City which becomes nonconforming based upon the definitions enumerated in subsection (B) of this section shall cease operation, or otherwise be brought into full compliance with the definitions of this section, not later than three years following the effective date of the ordinance codified in this section.~~

~~(X) Conflicts. If the provisions of this section conflict with or contravene any other provisions of this chapter, the provisions of this section shall prevail as to all matters and questions arising out of the subject matter of this section. (Ord. 1605 §§ 13, 14, 2023; Ord. 1317 §§ 2, 3, 2007; Ord. 1299 §§ 4, 5, 2007; Ord. U-1299 §§ 4, 5, 2006; Ord. 1280 § 2, 2006; Ord. U-1280 § 2, 2006; Ord. 1120 §§ 6, 7, 8, 1998; Ord. 1115 § 3, 1997; Ord. U-1115 § 3, 1997; Ord. 1108 § 2(b), 1997; Ord. 915 § 2, 1991; Ord. 898 § 2, 1990)~~

The provisions of Title 17, Section 17.92.010(F) apply as it relates to the City's regulations as to non-conforming uses. Any Existing Adult-Oriented Businesses not operating in compliance with Section 17.92, including Section 17.92.010(F), are not lawful businesses and are subject to the enforcement provisions of this Section 5.04.400 and any other applicable enforcement laws of the City.

5.04.410 ~~Ambulances and ambulance drivers~~ Entertainment

~~(A) Definitions. For the purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Ambulance" means a motor vehicle specially constructed, modified, equipped or arranged for the purpose of transporting sick, injured, convalescent, infirm or otherwise incapacitated persons whose medical condition requires transportation services.~~

~~(2) "Ambulance attendant" means any person who is employed to accompany an ambulance driver while transporting a person whose medical condition requires medical transportation.~~

~~(3) "Ambulance driver" means any person who is employed by an ambulance operator to drive an ambulance.~~

~~(4) "Ambulance operator" means any person who, for any monetary or other consideration, or as an incident to any other occupation, offers ambulance transportation services from any location in the City.~~

~~(B) Exemptions.~~

~~(1) Generally. No permit for an ambulance operator, ambulance driver, or ambulance attendant is required where the ambulance operator is:~~

~~(a) A public agency; or~~

~~(b) A person who maintains ambulances to provide first aid to its own employees.~~

~~(2) Exemption for Intercity Transportation. The requirements of this section do not apply where the ambulance operator is transporting persons from a point outside of the City into the City, or where the ambulance operator is merely travelling through the City to reach its destination.~~

~~(C) Application Information — Ambulance Operators. In addition to the information required by PMC 5.04.140, the application for an ambulance operator shall contain the following information:~~

~~(1) A description of any and all judgments awarded against the applicant in all cases arising out of the applicant's operation of an ambulance service in any other jurisdiction;~~

~~(2) The model, age, condition and patient capacity of each ambulance to be used in the operation of the ambulance business, and a description of the premises which are to serve as the base of operations;~~

~~(3) The kind and amount of automobile liability, public liability, professional liability, workers' compensation, and other insurance carried by the ambulance operator applicant;~~

~~(4) The color scheme and insignia to be used to identify the applicant's ambulances;~~

~~(5) The applicant's experience in transporting sick, convalescent or injured persons; and~~

~~(6) The schedule of rates to be charged by the applicant.~~

~~(D) Vehicle Maintenance.~~

~~(1) Odometers. Every ambulance operator making any charges based on mileage shall have the odometer of each ambulance tested and certified by the Sheriff's Department in accordance with the procedures of that department once every year. The results of such testing shall be reported to the Director by the permittee within 10 days.~~

~~(2) Periodic Inspections. Every ambulance operator who transports patients from or within the City shall have all ambulances under its ownership and control inspected yearly by a certified automotive repair dealer. Each ambulance operator shall provide the City with written confirmation, signed by that repair dealer, that the ambulances have been inspected and are in good working order within 10 days of the inspection.~~

~~(3) Failure to Make Inspection. If an ambulance operator fails to conduct a periodic inspection or fails to correct any maintenance problem noted in the inspection within 15 days of its discovery, such ambulance operator's permit shall be subject to immediate suspension pending revocation proceedings in accordance with this chapter.~~

~~(E) Insurance Requirements.~~

~~(1) Insurance Required. Every applicant for an ambulance operator's permit shall obtain and maintain in full force and effect general liability insurance and comprehensive automobile liability insurance in conformance with PMC 5.04.240. The liability coverage shall be in the amount of $1,000,000.~~

~~(2) Indemnifications. Every person permitted pursuant to this section shall execute an indemnity agreement as required by PMC 5.04.240.~~

~~(3) Workers' Compensation Insurance. In addition to any other insurance requirements contained in this chapter, the applicant shall file with the Director a policy of workers' compensation insurance, or a certificate of consent to self-insure issued by the State Director of Industrial Relations, applicable to all employees of the applicant. The permittee shall thereafter maintain in full force and effect such coverage during the term of the permit.~~

~~(F) Permits—Ambulance Drivers—Ambulance Attendants.~~

~~(1) Application Information. The permit application for an ambulance driver or ambulance attendant shall contain the following information:~~

~~(a) The applicant's name, address and home phone number;~~

~~(b) A photocopy of a valid California special driver's certificate (where applicable);~~

~~(c) A photocopy of either an Emergency Medical Technician I or IA or II Course Completion Certificate issued by the County of Los Angeles or by a school approved by the County of Los Angeles or a certificate for an emergency medical technician-~~

~~paramedic issued by the Director of Health Services, unless the applicant is a physician or registered nurse licensed by the state;~~

~~(d) The name, address and phone number of the ambulance operator employing or intending to employ the applicant; and~~

~~(e) The ambulance operator's proposed service area.~~

~~(2) Effect of Revocation of Certificate. If any applicable certificate required under this section is suspended, revoked, restricted or otherwise ceases to continue in full force and effect, the City permit for which such certification is required may be immediately suspended pending revocation proceedings as mandated by this chapter.~~

~~(3) Operator Responsibility. Every ambulance operator shall be responsible for promulgating and enforcing rules which ensure its employees' compliance with this section. (Ord. 1026 § 2, 1993; Ord. 898 § 2, 1990)~~

(A) Definitions. For purposes of this section, the following words shall have the following meanings:

(1) "Entertainment" means and includes, but is not limited to, any act, play, review, pantomime, scene, movie, song, dance act, song and dance act, exhibition, dancing for compensation, or poetry recitation, performed for the benefit of the public, either at a private or public establishment. "Entertainment" as used herein does not include mechanical music alone.

(2) "Adult-oriented entertainment" means any entertainment in an adult arcade, adult cabaret, adult motion picture theater, adult theater, or modeling studio, as those terms are defined in PMC 5.04.400(B)(1).

(B) The requirements of this section shall be inapplicable to adult-oriented entertainment which shall be subject to the permit and regulatory requirements of PMC 5.04.400 (adult-oriented business).

(C) Application Information. In addition to the information required by PMC 5.04.140, the application for an entertainment permit shall include the following information:

(1) The names and addresses of the persons who have authority or control over the location for which the permit is requested, and a brief statement of the nature and extent of such authority or control;

(2) The name and address of the owner of the premises upon which the permitted activity is to be conducted, if the applicant is leasing such premises from the owner;

(3) Whether the entertainment to be provided is adult-oriented entertainment; and

(4) The duration of the entertainment permit requested by the applicant. The Director is specifically authorized to issue a one-day entertainment permit, subject to the permittee's compliance with all applicable provisions of this section.

(D) Operating Requirements.

(1) Hours of Operation. Entertainment, excluding adult-oriented entertainment, may be provided at an establishment permitted to provide entertainment in any location for which it is permitted except between the hours of 2:00 a.m. and 7:00 a.m. unless the City Council specifically authorizes otherwise upon a showing of good cause and that authorization is expressly set forth on the business permit for the permitted activity.

(2) Exits. No permit may be issued pursuant to this section to any applicant if the location for which the permitted activity is being sought does not maintain unlocked doors with free and easy access sufficient to assure adequate ingress and egress in the event of an emergency.

(3) Lighting.

(a) Every business establishment at which permitted entertainment, excluding adult-oriented entertainment, may be provided shall be illuminated throughout at an intensity of at least three foot-candles during all hours of operation except while a floor show is in progress.

(b) Every business establishment at which permitted entertainment, excluding adult-oriented entertainment, may be provided shall, if it owns or operates an adjacent parking lot, provide illumination of at least two foot-candles throughout such parking lot.

~~(4) Manager Required. All business establishments permitted under this section shall have a responsible person on the premises to act as manager at all times during which the establishment is open. Such manager shall be permitted pursuant to PMC 5.04.040~~.

(E) Prohibitions – Revocation.

(1) Except for entertainment activities or performances conducted in an adult business operating in compliance with PMC provisions regulating such activities and performances,

any entertainment activities or performances which present an entertainer in a semi-nude state or reveal specified anatomical areas, or include performances which either: (a) are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities; and/or (b) feature entertainers who appear semi-nude, as defined in the City adult business ordinances in the PMC, are expressly prohibited.

(2) Any violation of this section shall result in a denial, revocation, or suspension of an applicable entertainment permit following the procedures set forth in Chapter 5.04 PMC and all applicable consequences of such denial, revocation, or suspension apply as provided in PMC 5.04.210 and 5.04.320 and related sections of this code.

(3) The City may enforce any violation of this section by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

5.04.420 ~~Billiards~~ Game arcades.

~~(A) Definitions. For the purposes of this section the following terms shall have the following meanings:~~

~~(1) "Billiards," "bagatelle," or "pool" means a game, played on an oblong table, whose object is to hit balls into pockets around the table's edge by means of a cue or stick.~~

~~(2) "Billiard club" means a proprietary club where billiards, bagatelle or pool is played, or in which any billiard, bagatelle or pool table is kept and persons are permitted to play or do play thereon, regardless of whether any fee is charged for the use of such table. "Billiard club" does not include a place having only one coin-operated pool or billiard table, which table is maintained as an incident to some other type of business activity.~~

~~(3) "Public billiard room" means any place open to the public where billiards, bagatelle or pool is played, or in which any billiard, bagatelle or pool table is kept and persons are permitted to play or do play thereon, regardless of whether any fee is charged for the use of such table. "Public billiard room" does not include a place having only one coin-operated pool or billiard table, which table is maintained as an incident to some other type of business activity.~~

~~(B) General Requirements.~~

~~(1) Application Information. In addition to the information required by PMC 5.04.140, an application for a permit to operate a billiard club or public billiard room shall state the exact location within the business establishment where the public billiard room or billiard club is to be located if such constitutes only a portion of a more extensive business establishment.~~

~~(2) Authorization of Location. Any permit issued to conduct a billiard club or public billiard room shall authorize the operation of such billiard club or public billiard room only at the place described in the application and only by the applicant.~~

~~(C) Operating Requirements.~~

~~(1) Visibility of Interior of Premises. Every billiard club or public billiard room shall be maintained so as to provide a clear and unobstructed view of the entire interior of the public billiard room or billiard club from the entrance into such room or club. A public billiard room or billiard club may be part of a more extensive business establishment that conducts other business activities and, in that event, need not be visible from the entrance to the more extensive business establishment.~~

~~(2) Hours of Operation.~~

~~(a) Generally. No public billiard room, billiard club or similar place of business shall be open from 2:00 a.m. until 6:00 a.m. of any day, nor shall an owner, manager or other person having charge of any billiard club or public billiard room keep the same open or allow or permit any game to be played therein between 2:00 a.m. until 6:00 a.m. of any day. No person shall remain on the premises of any public billiard room or billiard club during the hours when such public billiard room or billiard club is closed or required by this section to be closed, except the owner and regular employees.~~

~~(b) Exceptions. Notwithstanding subsection (C)(2)(a) of this section, any person having charge of any billiard room may apply to the Director for a permit to keep such room open from 2:00 a.m. to 6:00 a.m. The Director may grant such a permit if it finds that:~~

~~(i) The operation of the billiard room is on the same premises and is operated in conjunction with any other business that is normally and regularly operated between 2:00 a.m. and 6:00 a.m.; and~~

~~(ii) There is no objection to such operation by the Sheriff's Department.~~

~~(3) Age Restrictions. The owner, manager or other person in charge of any public billiard room or billiard club shall not permit any person under the age of 18 years to be, remain in, enter or visit such place unless:~~

~~(a) Such minor is accompanied by one of his parents or by his guardian or by a spouse 18 years of age or older; or~~

~~(b) Such parent or guardian personally presents a written consent to the owner, manager or other person in charge that the minor be permitted to enter, and alcoholic beverages are neither sold nor served in such place, and such place has no permit to sell, dispense or serve alcoholic beverages. Such written consent shall be in a form approved by the Director.~~

~~(4) Exceptions. Notwithstanding subsections (C)(2) and (3) of this section, if a billiard club or public billiard room is maintained in a segregable and physically separate part of a more extensive business establishment, then its closure does not require the closure of the more extensive business establishment, and the age restrictions do not apply to the more extensive business establishment. The restrictions set forth in subsections (C)(2) and (3) of this section shall only apply to the segregated billiard club or public billiard room.~~

~~(5) Disorderly Persons. No owner, manager or other person in charge of any public billiard room or billiard club shall allow or permit any intoxicated, quarreling or disorderly person or persons to be or remain in such place. (Ord. U-1030 § 10, 1993; Ord. 898 § 2, 1990)~~

(A) Definitions. For purposes of this section, the following words shall have the following meanings:

(1) “Coin-operated game” means any game or machine, operated by the insertion of money, coin or other object, which is predominately a game of skill or amusement. Such games include, but are not limited to, coin-operated pool tables, pinball machines and video games.

(2) “Game arcade” means any place open to the public where five or more coin-operated games are kept or maintained for use and operation by the public.

(B) General Requirements.

~~(1) Manager Required. A game arcade permittee shall provide a manager, pursuant to PMC 5.04.050, to oversee the operation and orderly use of the games in the game~~

~~arcade. Such manager shall be present in the game arcade during all hours that it remains open.~~

(1) Visibility of Interior.

(a) The permittee shall maintain the interior premises of the game arcade in a manner such that it is clearly visible from the entrance to the establishment in which the game arcade is located.

(b) Notwithstanding subsection (B)(2)(a) of this section, if the game arcade is located in a physically segregated portion of the premises, the permittee shall maintain its interior in a manner such that it is clearly visible from the entrance into the game arcade.

5.04.430 ~~Bingo~~ Gun dealers.

~~(A) Definitions. For the purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conforms to numbers or symbols selected at random. The game of bingo shall include cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes.~~

~~(2) "Eligible organization" shall be defined as any of the following:~~

~~(a) Labor, agricultural or horticultural organizations exempted from the payment of bank and corporation taxes by Section 23701a of the State Revenue and Taxation Code;~~

~~(b) Fraternal beneficiary societies, orders or organizations exempted from payment of bank and corporation taxes by Section 23701b of the State Revenue and Taxation Code;~~

~~(c) Religious, charitable, scientific, literary, educational, amateur sports or humanitarian organizations exempted from payment of bank and corporation taxes by Section 23701d of the State Revenue and Taxation Code;~~

~~(d) Business leagues, chambers of commerce, real estate boards and boards of trade exempted from payment of bank and corporation taxes by Section 23701e of the State Revenue and Taxation Code;~~

~~(e) Civic leagues, social welfare and employees' organizations exempted from payment of bank and corporation taxes by Section 23701f of the State Revenue and Taxation Code;~~

~~(f) Nonprofit pleasure and recreation clubs exempted from payment of bank and corporation taxes by Section 23701g of the State Revenue and Taxation Code;~~

~~(g) Domestic fraternal societies, orders or associations exempted from payment of bank and corporation taxes by Section 23701l of the State Revenue and Taxation Code;~~

~~(h) A mobile home park association whose membership is comprised of the mobile home tenants of a single mobile home park, and which organization was formed for the benefit of the resident tenants; and~~

~~(i) A senior citizens organization which has been organized to benefit senior citizens and whose membership is comprised of persons over the age of 54.~~

~~(B) General Requirements.~~

~~(1) Games Permitted. Pursuant to Article IV, Section 19, of the California Constitution and Section 326.5 of the California Penal Code, this section authorizes the conduct of bingo games for charitable purposes and in conformity with the other requirements imposed herein.~~

~~(2) Eligible Organizations. Only an eligible organization may apply for a permit to operate bingo games within the City.~~

~~(3) General Procedure. The provisions of this section shall control the permitting of bingo games where in conflict with any other provisions of this chapter.~~

~~(a) Application Information. Any eligible organization shall file an application for a business permit to operate a bingo game with the Director upon a form to be provided by the City. Notwithstanding any other provision of this chapter, the application shall specify the following information:~~

~~(i) The name, address and telephone number of the local applicant organization, the nature of the organization, and a statement that the applicant is an eligible organization as defined by this section;~~

~~(ii) The names and addresses of all officers and directors of the eligible organization;~~

~~(iii) A list of the names of all members of the applicant organization who will operate and staff bingo games, and the date they became members;~~

~~(iv) A detailed schedule of the date, hours, location and occupancy capacity of the prospective location where each bingo game is to be held;~~

~~(v) A detailed description of the record system to account for the receipts, prizes, expenses and profits of each bingo game;~~

~~(vi) The location and signatories of the special bank accounts required by this section;~~

~~(vii) The specific charitable purposes which the bingo proceeds will benefit;~~

~~(viii) Whether the maximum number of players at any time will be more than 100;~~

~~(ix) A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code and this section as they may be amended from time to time, and agrees that the permit to conduct bingo games may be revoked upon violation of any such provisions;~~

~~(x) The address to which notice, when required, is to be sent or mailed, and the names of any individual or individuals, in addition to those set forth elsewhere in the application, who are authorized to accept service of process on behalf of the permittee;~~

~~(xi) The signatures of at least two officers, including the presiding officer of the eligible organization; and~~

~~(xii) Any other information that the Director deems necessary.~~

~~(b) Fees Required. The fee for a business permit to operate bingo games shall be in an amount established by resolution of the City Council but shall not exceed $50.00 annually for an initial permit or a renewal. If an application for a permit is denied, one-half of any permit fee paid shall be refunded.~~

~~(c) Contents of Permit. A business permit to operate bingo games shall include the following information:~~

~~(i) The name and nature of the organization to which the permit is issued;~~

~~(ii) The address or location of the place where bingo games are authorized to be conducted. No more than one such location shall be authorized;~~

~~(iii) The occupancy capacity of the rooms in which bingo games are to be conducted;~~

~~(iv) The date of the expiration of the permit;~~

~~(v) Such other information as may be necessary or desirable for the enforcement of the provisions of this chapter.~~

~~(d) Notification of Changes in Application Information.~~

~~(i) The permittee shall notify the Director in writing of the change of any fact set forth in the permittee's application within five days.~~

~~(ii) The permittee shall notify the Director of any changes in the list of members who will operate and staff bingo games.~~

~~(iii) Any notification required by subsections (B)(3)(d)(i) and (ii) of this section shall be made in writing and served upon the Director in one of the following methods:~~

~~(A) Personal delivery at least three days prior to the operation of any game. The permittee shall obtain a receipt evidencing such delivery; or~~

~~(B) Transmittal of such changes by certified mail bearing a date at least five days prior to the operation of any game.~~

~~(iv) The permittee shall retain in its records proof of service of the notifications required by subsections (B)(3)(d)(i) and (ii) of this section.~~

~~(C) Operating Requirements.~~

~~(1) Games Open to Public. All bingo games conducted in the City shall be open to all members of the public.~~

~~(2) Hours of Operation. Each permit issued pursuant to this section shall allow the permittee to operate bingo games for only one day during each week. Bingo games shall not be conducted for more than six hours out of the 24-hour period of each day. No bingo game shall be conducted before 10:00 a.m. or after 2:00 a.m. of any day.~~

~~(3) Participants Must Be Present to Play. No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted.~~

~~(4) Use of Credit Prohibited. No permittee shall issue chips or money to a patron on credit or loan (including but not limited to IOUs and checks to be held) or allow any patron to play on credit.~~

~~(5) No Admission Fees. No admission fee, purchase or donation shall be required for entry onto the premises where the bingo game is conducted.~~

~~(6) Location Restrictions.~~

~~(a) A permittee shall conduct bingo games only on property owned, rented or leased by it, or property whose use is donated to the organization, and which property is used by such organization for an office or for performance of the purposes for which the organization is organized. Nothing in this section shall be construed to require that the property owned, rented or leased by the organization be used or leased exclusively by such organization. The permit issued under this section shall authorize the holder thereof to conduct bingo games only at the address which is stated in the application.~~

~~(b) The owner of a specific facility at which bingo games are played shall not allow use of the facility for such play for more than three days per week.~~

~~(7) Occupancy Limit. Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such games are conducted, as determined by the Fire Department and the Division of Building and Safety, in accordance with applicable laws and regulations. The permittee shall not reserve seats or space for any person.~~

~~(8) Permit and Rules to Be Posted. Before conducting a bingo game, the permittee shall post its business permit to operate the bingo game in a conspicuous place at the public entrance to the property on which the game is to be conducted. The permittee shall produce and exhibit the same when applying for a renewal thereof, and whenever requested to do so by any officer authorized to issue or inspect permits or to enforce the provisions of this chapter or this code. The permittee shall also post the costs, prizes and rules of each game to be played adjacent to the permit during the conduct of the bingo game.~~

~~(9) List of Members Operating and Staffing Games. The permittee shall have available on the premises the list of members operating and staffing the game at all times during the conduct of games. If the list is different from the list originally submitted with the permittee's application, proof of service of the revised list on the Director shall be attached to the current list.~~

~~(10) Alcoholic Beverages Prohibited. Alcoholic beverages shall not be served or consumed on the premises at which bingo games are conducted during the hours of operation of a bingo game. No person who is intoxicated shall be allowed to participate in a bingo game.~~

~~(11) Minors Not to Participate. No person under the age of 18 years of age shall be allowed to participate in any bingo game.~~

~~(12) Enforcement. The City, by and through its authorized personnel, may conduct an examination or inspection of any premises in which bingo games are conducted at any reasonable time for the purpose of determining whether the permittee is complying with all of the provisions of this section and all other applicable statutes, ordinances, rules and regulations affecting the permittee or the business activity.~~

~~(13) Operation by Permittee.~~

~~(a) A bingo game shall be operated, managed, staffed and advertised only by members of the permittee organization. Such members shall not receive a profit, wage or salary, or any other direct or indirect consideration from any bingo game.~~

~~(b) All staff members of bingo games shall wear on their outside clothing an identification insignia or badge not less than two inches by three inches in dimension, indicating the name and title of the staff member.~~

~~(14) Bingo Game Operators.~~

~~(a) All members of eligible organizations who operate the bingo games on behalf of an eligible organization shall apply for a bingo operator's permit with the Director upon a form provided by the City. A permit fee shall not be required; however, no person shall operate a bingo game on behalf of a permitted eligible organization until such application has been reviewed and approved pursuant to PMC 5.04.180.~~

~~(b) The application for a bingo operator shall contain the following information:~~

~~(i) The applicant's name, address and phone number;~~

~~(ii) Photographic identification, as defined in PMC 1.04.100, and fingerprints of the applicant;~~

~~(iii) A record of the applicant's employment history for the last three years; and~~

~~(iv) The name of the eligible organization for which he or she will operate bingo games.~~

~~(D) Accounting Procedures.~~

~~(1) Proceeds.~~

~~(a) The proceeds derived from the operation of a bingo game shall be used only for charitable purposes.~~

~~(b) Organizations exempt from the payment of bank and corporation tax pursuant to Section 23701d of the State Revenue and Taxation Code shall keep all profits derived from a bingo game in a separate fund or account which shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes.~~

~~(c) All other eligible organizations authorized to conduct bingo games pursuant to this section shall keep all proceeds derived from a bingo game in a special fund or account which shall not be commingled with any other fund or account. Such proceeds shall be used only for charitable purposes, except as follows:~~

~~(i) Such proceeds may be used for prizes at authorized bingo games;~~

~~(ii) A portion of such proceeds, not to exceed 10 percent of the proceeds after the deduction of prizes, or $1,000 per month, whichever is less, may be used for rental of property, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.~~

~~(d) All proceeds derived from any bingo game shall be deposited in a special account as required by this section, within 24 hours of the completion of the bingo game and shall not be commingled with any other account or funds.~~
~~(e) Prizes Awarded.~~

~~(i) The total value of prizes awarded during the conduct of any bingo game shall not exceed $250.00 in cash or kind, or both, for each separate game which is held. All monetary or cash prizes shall be paid in the form of a check drawn on a financial institution.~~

~~(ii) The permittee shall keep a record, on a form approved by the Director, showing the name and written signature, the address, the telephone number of the winner, and the consecutive serial number on the receipt for the prize.~~

~~(2) Inspection of Records.~~

~~(a) The permittee shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, or supervision of bingo games which are authorized by this section. The City, by and through its authorized personnel, may examine and audit such records at any reasonable time, and the permittee shall fully cooperate with the City by making such records available. Such examination may consist of, but is not limited to, the actual counting or examination of players, bingo cards, and equipment, records and funds.~~

~~(b) The Director may demand a complete detailed accounting of all income and expenses at any time for good cause. If the permittee fails to render such an accounting within the time limit set by the Director, the bingo permit shall be temporarily suspended until such accounting is rendered.~~

~~(E) Bond Requirements.~~

~~(1) Terms of Bond. Except as provided in subsection (E)(4) of this section, every eligible applicant organization shall, as a condition of the issuance of a bingo permit, maintain a bond in the sum of $5,000 with the Director, running to the City for the use and benefit of interested persons and parties, executed by the eligible applicant organization and a surety company authorized to do business in the state.~~

~~In lieu of such bond, the eligible applicant organization may assign to the City savings and loan certificates or a cashier's check totalling $5,000.~~

~~The bond or assignment shall be required to ensure strict compliance by the eligible applicant organization with the provisions of this chapter and any other applicable statutes, rules, regulations or ordinances and to ensure the repayment of any direct pecuniary loss sustained through any act of grand or petty theft or any other wrongful act on the part of any principal, employee or operator of any bingo game.~~

~~(2) Action Upon the Bond. Any person who sustains any injury covered by the bond described in this section may, in addition to any other remedy which that person may have, bring an action in his or her own name upon the bond for the recovery of any damage sustained. The bond shall continue in effect and may be sued upon from time to time until the whole of the penalty shall be exhausted. The Director may require the filing of a new bond, as provided for in this section. Upon failure to file a new bond within 10 days, the Director shall forthwith suspend the bingo permit and any related bingo operator permits.~~

~~(3) Action on the Assignment. If, in lieu of a bond, an applicant assigns to the City savings and loan certificates or a cashier's check, the applicant shall agree in writing that if the~~

~~Director finds that any person has sustained any pecuniary loss through any act of grand or petty theft or other wrongful act on the part of the eligible organization, employee or bingo operator, the City may redeem a sufficient number of such certificates or may deposit the cashier's check and, from the proceeds, reimburse such person for loss sustained. The Director may require the assignment of additional funds as provided in this section. Upon failure to make such assignment within 10 days, the Director shall suspend the bingo permit and any related bingo operator permits.~~

~~(4) Exemptions from Bond Requirements. The bond requirements set forth in subsection (E)(1) of this section shall not be applicable to mobile home park associations or to senior citizens organizations whose membership is comprised predominately of residents of this City. (Ord. 1408 § 4, 2010; Ord. 1317 § 4, 2007; Ord. U-1030 §§ 11 – 14, 1993; Ord. 929 § 1, 1991; Ord. 898 § 2, 1990)~~

(A) Definitions. For purposes of this section, the following term shall have the following meaning:

"Gun dealer" means any person who sells or otherwise transfers to members of the public any pistol, revolver or other firearm, new or used, capable of being concealed upon the person.

(B) Application Information.

(1) Permit Form. Any permit issued to operate a gun dealer shall be on a form provided by the State Attorney General.

(2) Application Form. Notwithstanding any other provision of this chapter, every applicant for a gun dealer permit shall fill out the application form provided by the State Attorney General.

(C) Permit Subject to Conditions. All permits issued under this section are subject to the following conditions, breach of any of which subjects the business permit to forfeiture:

(1) The business activity shall be carried on only in the building designated in the permit.

(2) The permit or a copy thereof, certified by the issuing authority, shall be posted in a conspicuous manner on the premises in which the business is being conducted.

(3) No pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered:

(a) Within 10 days of the application for the purchase, or, after notice by the Department of Justice ("Department") pursuant to subdivision (c) of Section 12076 of the State Penal Code, within 10 days of the submission to the Department of corrected copies of the register, or within 10 days of the submission to the Department of any fee required pursuant to subdivision (d) of Section 12076 of the State Penal Code, whichever is later:

(i) Unless unloaded and securely wrapped or unloaded and in a locked container;

(ii) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity to the dealer;

(iii) Whenever the dealer is notified by the Department of Justice that a purchaser is in a prohibited class described in Section 12021 or 12021.1 of the Penal Code or Section 8100 or 8103 of the Welfare and Institutions Code.

(b) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(c) The permittee shall agree to and shall act properly and promptly in processing transfers of pistols, revolvers, and other firearms capable of being concealed upon the person.

(d) The permittee shall comply with Sections 12073 and 12077 and subdivision (b) of Section 12072 of the State Penal Code.

5.04.440 ~~Carnivals and concessions~~ Massage establishments and massage technicians

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Carnival" means a business enterprise consisting of amusements which include, but are not limited to, merry-go-rounds, ferris wheels, or other similar mechanical apparatus or rides; menageries, trained animal acts, circuses, animal rides, petting zoos or similar animal exhibitions; acrobatic shows, boxing exhibitions or other physical feats or demonstrations; sideshows, games or tests of strength, skill or other capacity; and public eating places for which a fee or payment may be charged for entry into the location, viewing of any such entertainment or amusement, participation in any of its activities, or purchase of food, drink or merchandise.~~

~~(2) "Concession" means each ride, show, store, booth, game, eating place or other public attraction which is part of a carnival, as defined in this section.~~

~~(B) General Requirements.~~

~~(1) Scope of Permit. A permit to operate a carnival entitles the permittee to operate and manage the entire carnival. It may also authorize the permittee to operate carnival concessions; provided, that the concessions are specified in the application for the permit, that the proceeds from the concessions are to be disbursed, "split" or otherwise apportioned by or through the permittee to whomever runs the concessions. Otherwise, a separate permit is required for each concession to be operated at any carnival, and every applicant therefor must comply with the application requirements of this section to the extent applicable to any such concession.~~

~~(2) Application Information.~~

~~(a) In addition to the information required by PMC 5.04.140, every person applying for a business permit to operate, conduct or manage a carnival or concession shall file an application with the Director which shall contain the following information:~~

~~(i) If a corporation, the applicant shall provide a copy of its articles of incorporation;~~

~~(ii) A detailed description of the dates, location, and hours of operation of the carnival or concession;~~

~~(iii) A list of the names of all agents and employees involved in the operation and management of the carnival if the permit application is for a carnival, and a similar list of agents and employees involved in the conduct of the concession if the permit application is for a concession;~~

~~(iv) A detailed schedule of the concessions to be presented by the applicant at the carnival, including the various fees to be charged, the names of the persons in charge of each concession, and the rules for the operation of each such concession;~~

~~(v) Copies of all contracts, agreements or other written memoranda between the applicant and any other person with respect to the operation of each concession at the carnival, including a statement as to disbursement, "split" or other apportionment of the proceeds between the applicant and any other person;~~

~~(vi) A detailed description of the mechanical devices or equipment owned by or under the control of the applicant to be used in the operation of the carnival or concession;~~

~~(vii) Copies of all policies and binders of liability insurance, including, but not limited to, vehicle, public, product and professional, and workers' compensation insurance held by the applicant;~~

~~(viii) Copies of the applicant's rules and regulations governing the operation of the carnival or concession;~~

~~(ix) Proposed date, time and location for on-site inspection by interested City or County departments prior to the commencement of the carnival or concession;~~

~~(x) A statement that the applicant agrees to operate the carnival or concession in strict accordance with the provisions of this section and all other applicable laws, and assumes full responsibility for the lawful and safe operation of the carnival or concession; and~~

~~(xi) Where the applicant for a carnival or concession permit is not the sponsor of the carnival or concession, the name, address and telephone number of each sponsor and a detailed description of the functions, responsibilities and obligations of any such sponsor in the operation of the carnival or concession.~~

~~(b) The application for permit shall be filed at least 60 days prior to the commencement of any carnival.~~

~~(3) Sponsors. Every person sponsoring a carnival or concession for a charitable purpose shall comply with the provisions of this code regarding charitable solicitors, in addition to the requirements herein, prior to the commencement of such carnival or concession.~~

~~(4) Current Supplementary Information Required. The applicant or permittee shall be required to keep current the information required on the application for a carnival or concession permit by supplementing or modifying the information to maintain its accuracy. Supplementary information shall include, but is not limited to, future dates, locations and hours of operation of the carnival or concessions; new or otherwise undisclosed agents and employees involved in the operation of the carnival or concessions; new or otherwise undisclosed sponsors of the carnival or concessions; and new or otherwise undisclosed concessions to be presented at the carnival.~~

~~(5) Additional Conditions. In addition to any conditions which may be imposed pursuant to this chapter, the permit shall be subject to the condition that the applicant or permittee satisfactorily undergo an on-site inspection of the location of the permitted activity by interested officers or departments of the City or County prior to commencement of the permitted activity. The Director may impose such other conditions as the Director finds~~

~~necessary for reasons of health, sanitation, noise, clean-up, and the general welfare of the public. Such conditions shall appear on the permit.~~
~~(C) Operating Requirements.~~

~~(1) Responsibilities of Permittee. The carnival permittee shall be responsible for the manner in which all rides, exhibits, shows, games and other concessions allowed under the carnival permit are conducted, regardless of whether the permittee is operating independently or in conjunction with, or as an agent for, any religious or charitable organization. A carnival concession permittee is similarly responsible for the conduct of the concessions for which it is permitted.~~

~~(2) Posting of Regulations. All rules pertaining to the operation of any ride, game or other concession must be posted conspicuously at the location of the ride, game, or other concession. The fee for viewing, participating or otherwise engaging in any ride, game or other concession must also be conspicuously posted.~~

~~(3) Concessions – Operation Requirements.~~

~~(a) All players or participants in any game or other concession must be given an equal opportunity to play or participate. Prior to allowing any person to play or participate in any game or other concession, the concession operator shall collect the posted fee and return the proper change to the player or participant. The concession operator shall not collect for more than a single game from any player or participant at one time. The use or employment of "sticks," "shills," or any person posing as a patron, when not really a patron, is prohibited. The employment or utilization of minors under the age of 16 years of age in the operation of any rides, games or other concessions is prohibited. Games or other concessions utilizing foul lines wherein any person or persons involved in the operation of the game or concession are the sole determiners as to whether or not a player has fouled are prohibited.~~

~~(b) No concessions other than those submitted to and approved by the Director shall be played, conducted, permitted or allowed at the carnival location.~~

~~(c) Any packaged merchandise distributed as a prize shall be plainly marked and its contents described conspicuously. Only items of merchandise that can actually be won by any player may be displayed in conjunction with any game or other concession. No other merchandise or prize shall be displayed. Special games or other concessions wherein a player is charged a greater fee than other players are charged in order to win or compete for any special or larger prize are prohibited.~~

~~(4) Game of Chance Prohibited. Games of skill may be permitted under a carnival or concession permit. Games of chance are prohibited.~~

~~(5) Operating Hours. A carnival or concession may only operate between the hours of 10:00 a.m. and 10:00 p.m.~~

~~(D) Insurance Requirements. Every applicant for a carnival permit shall obtain and maintain in full force and effect public liability insurance in conformance with PMC 5.04.240. The liability coverage shall be in the amount of $5,000,000.~~

~~(E) Conditions of Permit. The Director may issue a permit pursuant to this section upon the following findings:~~

~~(1) The zone in which the carnival is proposed to be conducted has been approved by the Planning Department and will not be detrimental to the public health, safety and welfare;~~

~~(2) The carnival is not located within 500 feet of a residential neighborhood, or the carnival operator has received the written consent of more than 50 percent of the owners and tenants of any residences located within 500 feet of the carnival site; and~~

~~(3) The applicant will adequately provide for the maintenance and cleanliness of the carnival site prior to, during, and upon closing of the carnival. (Ord. U-1030 § 15, 1993; Ord. 898 § 2, 1990)~~

(A) Definitions. For purposes of this section, the following words and phrases have the following meanings:

(1) “Certificate” means a certificate issued by a recognized school of massage (as defined in this subsection (A)), certifying completion of the required curriculum in massage training.

(2) “Corporate massage” means any massage of the neck, arms, shoulders and back area above the waist where the client is fully clothed and in a sitting position, where the massage is: (i) administered by a licensed and permitted massage technician; (ii) approved as an accessory use in a permitted location; and (iii) where the massage is limited to the upper body and conducted without the use of supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice.

(3) “Massage” means any method of treating the external parts of the body for remedial, health, or hygienic purposes by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, other similar preparations commonly used in this practice, or any other system for treatment or manipulation of the human body with or without any form of bath, such as Turkish, Russian, Swedish, Japanese, Shiatsu, acupressure, vapor, shower, electric tub, sponge, mineral, fomentation or any other type of bath, including herbal body wraps.

(4) “Massage establishment” means any establishment having a fixed place of business where any person provides or attempts to provide, engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any business of providing massages, as defined in this subsection (A), or health treatments involving massage as the principal function, and where more than one massage table or chair will be utilized, or more than one licensed and permitted massage technician will be on duty at any one time.

(5) “Massage technician” includes “masseur,” “masseuse,” “massage practitioner” and “massage therapist,” and means any person who administers to any other person, for any form of consideration or gratuity, a massage as defined in this section.

(6) “Qualified massage association” means any association that meets all of the following criteria:

(a) The association is a nonprofit organization; and

(b) The association has established as minimum education requirements for membership the completion of a minimum of 500 hours of education and training or its equivalent, in anatomy, physiology, hygiene, sanitation, massage therapy and practice, ethics of massage practice, first aid and CPR, from a recognized school of massage and has a written and practical testing of equivalency administered and overseen by its admission committee or by a national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which is required in order to obtain membership; and

(c) The association offers and requires participation and completion by its members of a minimum number of hours of specified continuing education as a condition of continuing membership; and

(d) The association is open to members of the general public who meet the requirements for membership; and

(e) The association has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of those rules.

(7) “Recognized school of massage” means any school or institution of learning that teaches the theory, ethics, practice, profession, and work of massage, which school or institution complies with California Education Code Sections 94310 and 94311, or complies with equivalent regulations from other jurisdictions, and which requires a resident course of study before the student is furnished with a diploma or certificate of graduation. No school offering a correspondence course and not requiring actual attendance will be deemed to be a recognized school of massage. A school of massage may not provide massage services to any member of the general public for any form of compensation, gratuity or consideration.

(8) “Sheriff” means the Los Angeles County Sheriff or his or her designee.

(B) Exemptions. This section shall not apply to the following:

(1) The provisions of this section that require a massage technician permit are not applicable to, and may not be construed as applying to, any of the following persons:

(a) Physicians, surgeons, chiropractors, osteopaths, physical therapists or any registered or licensed vocational nurse working on the premises of and under the direct supervision of a physician, surgeon, chiropractor, osteopath, or physical therapist duly licensed to practice that profession in the state of California. Practical nurses, or other persons not having a massage technician permit whether or not employed by the physician, surgeon, chiropractor, osteopath, or physical therapist, may not administer or practice massage;
(b) State-licensed acupuncturists;

(c) Registered nurses and licensed vocational nurses;

(d) Coaches or trainers of amateur, semiprofessional, or professional athletes;

(e) Barbers and beauticians, duly licensed under the laws of the state of California, while engaging in their professions; provided, however, that this exception applies solely to the massaging of the neck, scalp and hair of the customer or client;

(f) State-certified massage technicians pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code who are practicing massage consistent with the requirements therein.

(2) The provisions of this section that require a massage establishment permit are not applicable to, and may not be construed as applying to, any of the following:

(a) Hospitals, nursing homes, sanitariums, or other health care facilities licensed by the state of California;

(b) Hospices, including those located in residences, that are licensed by the County of Los Angeles;

(c) The athletic departments of accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment;

(d) Health fairs or similar special events that are reviewed and approved by the Director;

(e) A health club, fitness center, gymnasium, hotel with over 100 rooms, a suntan parlor, a barber or beauty shop where massage is provided as an approved accessory use to the primary business;

(f) Physician's, surgeon's, chiropractor's, osteopath's, or physical therapist's medical practice as an approved accessory to the primary business;

(g) Massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code, and to massage establishments or businesses that employ or use only persons certified to provide massage services pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code who are practicing massage consistent with the requirements therein.

(C) Permit Application – Massage Establishments. It is unlawful for any person, to engage in, conduct, or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises within the City, the operation of a massage establishment as defined in this section without first having obtained a permit issued by the City pursuant to the provisions of this section. A permit is valid as provided for in PMC 5.04.230, unless earlier revoked or suspended. The required permit is in addition to any business license required by this code. The application for a permit does not authorize operation of a massage establishment unless and until the permit has been issued. In addition to the information required by PMC 5.04.140, all applications for a permit to conduct a massage establishment business must contain the following information, as applicable:

(1) The nature of the ownership of the business, i.e., whether by an individual, partnership, corporation, or otherwise. If the applicant is a corporation, the name of the corporation

must be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses and telephone numbers, and business addresses and telephone numbers, of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of that corporation. If the applicant is a partnership, the application must set forth the name, residence and business addresses, and telephone numbers, of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the Secretary of the State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations is applicable. The applicant corporation or partnership must designate one of its officers or general partners to act as its responsible managing officer. That designated person must complete and sign all application forms required for an individual applicant under this subsection, but only one application fee will be charged;

(2) The precise name or names under which the business of the massage establishment is to be conducted;

(3) The business address and all telephone numbers of the massage establishment;

(4) A list of the names, residence addresses, and telephone numbers of all proposed massage technicians and employees to be employed by the massage establishment, and the name, residence address, and telephone number of the manager or managing employee proposed to be principally in charge of the operation of the massage establishment;

(5) A description of any other business operated on the same premises, or within the City or the state of California, that is owned or operated by the applicant;

(6) The present address, telephone number, and the previous addresses, if any, of the applicant for the last 10 years immediately preceding the date of the permit application and the dates of each address;

(7) Written proof of the applicant's or responsible managing officer's age, height, weight, color of hair and eyes, sex, and date of birth;

(8) Two identification photographs at least two inches by two inches taken in the last six months and fingerprints of the applicant or the responsible managing officer;

(9) The employment history and experience of the applicant in the massage or similar business for the last 10 years immediately preceding the date of application including, but

not limited to, the massage or similar business history and experience in this City or any other city or state;

(10) Whether the applicant has had any other permit or license issued by an agency, board, city, county, territory, or state; the date of issuance of that permit or license, and whether the permit or license was denied, revoked or suspended; or, if a vocational or professional license or permit was denied, revoked or suspended, the reason therefor;

(11) All criminal convictions, including ordinance violations and pleas of nolo contendere, within the last 10 years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding traffic violations, and a statement as to the date and place of each such conviction and reasons therefor;

(12) The name and address of the owner or lessor of the real property upon which the business is to be conducted. If the applicant is not the owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on that property;

(13) Proof of matriculation from a “recognized school of massage,” as defined in subsection (A) of this section. If the applicant is a corporation or partnership, then this proof must be supplied for the member of the corporation or partnership who will actively participate in the management of the massage establishment, and who is designated as the responsible managing officer;

(14) Proof of membership in a “qualified massage association,” as defined in subsection (A) of this section;

(15) A floor plan of the massage establishment indicating all proposed tenant improvements, including the location of each room, massage table and/or chair dedicated to providing massage services. No alterations to the approved floor plan will be permitted unless and until reviewed and approved by the appropriate City departments;

(16) Authorization for the City, its agents and employees, to seek verification of all information contained in the application;

(17) Such other information as may be deemed necessary by the Director or the Sheriff’s Department;

(18) A statement in writing, signed and dated by the applicant, declaring under penalty of perjury that all information contained in the application is true and correct and that all provisions of this section will be adhered to.

(D) Massage Establishment – Permit Issuance and Denial. Upon receipt of a written application, the Director will have 60 days to conduct an investigation to ascertain whether the permit should be issued. The Director must forward a recommendation to the City Council, which has the authority to issue the permit unless it makes any of the following findings:

(1) The applicant, if an individual, or any officers, directors, or shareholders of the corporation, if the applicant is a corporation, or any of the partners including limited partners, if the applicant is a partnership, or any person proposed to be engaged or employed in the massage establishment, has within 10 years preceding the date of the application:

(a) Been convicted of a violation of California Penal Code Section 266(h), 266(i), 314, 315, 316, 318, or subsection (a) or (b) of Penal Code Section 647, or any other provisions of law that require a person to register under the provisions of Penal Code Section 290, or where the prosecution accepted a plea of guilty or nolo contendere to a charge of violating Penal Code Section 415, or any lesser included offense, in satisfaction of or as a substitute for any of the previously listed crimes;

(b) Been convicted of a violation of Health and Safety Code Section 11550, or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058;

(c) Been convicted of an offense in any other state, which offense is the equivalent of any of the above referenced offenses;

(d) Engaged in conduct that would constitute grounds for suspension or revocation under this Section;

(e) Been subjected to a permanent injunction against the conduct or maintenance of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or similar provisions of law of a jurisdiction outside the state of California; and

(f) Been convicted of an act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are related to the qualifications, functions or duties of the applicant;

(2) The applicant had a massage operator or massage technician permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county, or state within 10 years prior to the date of application;

(3) The applicant has made false, misleading, or fraudulent statement(s) or omission(s) of fact to the City in the permit application process;

(4) The application does not contain all of the information required by subsection (C) of this Section;

(5) The massage establishment, as proposed by the applicant, would not comply with all applicable laws, including but not limited to health, zoning, fire, and safety requirements and standards;

(6) The applicant has not satisfied the requirements of this section within the time specified.

If the application is denied for failure to comply with subsection (D)(3) or (4) of this section, the applicant may not reapply for a period of 12 months from the date the application was denied.

(E) Massage Establishment – General Provisions. All permittees must comply with the following conditions and any other conditions specified by the City Council in connection with the issuance of a permit:

(1) Prior to occupancy of the massage establishment, a final inspection by the appropriate City departments and agencies will be conducted to verify compliance with the approved plans and with all applicable provisions of this section. On-going operation of the massage establishment must be in conformance with this code and the zoning ordinance at all times.

(2) No massage technician, employee, or manager may massage the genital or anal area of any patron, or the breasts of any female patron, nor may any permittee or manager of a massage establishment allow such massage. No massage technician, operator, or manager, while performing any task or service associated with the business of the massage establishment, may be present in any room with another person unless that person's genitals, anus, or, in the case of a female, her breasts, are completely covered by a fully opaque, nontransparent material.

(3) No permittee may conduct business under any name not specified in the permit.

(4) All massage establishments must have a manager on the premises at all times that the massage establishment is open. The permittee of the massage establishment must file a statement with the Director designating the person or persons who are authorized to act as the manager and to ensure compliance with this section, as well as being the person to whom notices required by this chapter may be delivered to for receipt by the permittee.

(5) No massage establishment may be or remain open for business without having at least one massage technician on duty on the premises who holds a current valid permit.

(6) The permittee and its designated manager(s) must ensure that the permit for each on-duty massage technician is conspicuously displayed in a location visible to the patrons, and that each massage technician is wearing the photo identification required by subsection (J)(2) of this section.

(7) No permittee may employ any person as a massage technician who does not have a valid massage technician permit issued pursuant to this section. Every permittee must report to the Director any change of employees, whether by way of new or renewed employment, discharge or termination. The report must set forth the name of the employee and the date of hire or termination. The report must be made within five days of the hire or termination. The permittee must deliver to the Director the permit and photo identification card of any massage technician no longer employed by the permittee.

(8) All persons employed in the massage establishment must be fully clothed at all times. Clothing must be of a fully opaque, nontransparent material and provide complete covering from mid-thigh to three inches below the collar bone.

(9) Each permittee must conspicuously display the current massage establishment permit in a location within the massage establishment that is visible to patrons.

(10) The permittee must comply with all provisions of this section and all applicable provisions of this code.

(F) Massage Establishment – Facility and Operating Requirements.

(1) Facilities.

(a) Structure. Massage must be conducted in a structure that is located in a zone district where that use is authorized.

(b) Services List. Each permittee must post and maintain in a conspicuous location within the premises, a list, in English, of services available and the cost of those services. No permittee, or responsible managing officer, may permit, and no massage technician may offer or perform, any services other than those posted.

(c) Lighting. Each permittee must provide in each room where massage is conducted sufficient lighting and ventilation that complies with the Uniform Building Code. The lighting in each massage room must be provided by at least one 60-watt white light bulb and must be activated at all times while a patron is in that room or enclosure. No strobe flashing lights may be used. No colored lights may be used nor may any coverings be used which change the color of the primary light source.

(d) Bath Facilities. A minimum of one toilet and one separate wash basin must be provided for patrons in each massage establishment. The basin must provide soap or detergent and hot running water at all times and must be located within close proximity to the area devoted to the conduct of massage services. A permanently installed soap dispenser, filled with soap, and a single-service towel dispenser must be provided at the restroom hand wash sink. In addition, a separate wash basin must be provided for the use of employees. No bar soap may be used. A trash receptacle must be provided in each toilet room. Showers may be provided at the permittee's option.

(e) Linen Storage. Closed cabinets must be provided and used for storage of clean linens, and approved receptacles must be provided for the deposit of soiled linen. All cabinets and receptacles must be clearly labeled.

(f) Separate Rooms. If male and female patrons are to be treated simultaneously at the same massage establishment, then separate massage rooms must be provided for male and female patrons.

(g) Maintenance. All facilities of the massage establishment must be in good repair and must be thoroughly cleaned and sanitized each day that the business is in operation. The surfaces of all walls, floors, and ceilings of each restroom and shower area, if provided, must be made smooth so as to be easily cleaned. No carpeting may be installed in any of these areas.

(h) Massage Table. A massage table must be provided in each massage room dedicated for massage services and the massage must be performed on the massage table.

The tables must be a minimum height of 18 inches. Two-inch-thick foam pads, with a maximum width of four feet, may be used on a massage table and must be covered with

durable, washable plastic or other waterproof material. Beds, floor mattresses, and waterbeds may not be used in the administration of a massage.

(2) Operating Requirements.

(a) Same Use. No massage establishment may operate as a school of massage, or use the same facilities that are used by a school of massage.

(b) Equipment. Each permittee must provide and maintain adequate equipment for disinfecting and sterilizing any instruments used in massage. Instruments used in performing massage may not be used on more than one patron unless they have been sterilized using approved sterilizing methods.

(c) Inspections. The permittee must consent to the inspection of the massage establishment by the City's Division of Building and Safety, Code Enforcement Department, Fire Department, Sheriff's Department, and the County Health Department for the purpose of determining that the provisions of this section, and all other applicable laws or regulations, are met. Routine inspections may not exceed more than two each year, unless violations are found or complaints are received. During the inspection, verification of the identity of all on-duty massage technicians may occur. Inspections of the massage establishment may be conducted at any time the business is in operation or at any other time that employees are on the premises.

(d) Linen. Common use of towels or linen may not be permitted. Towels and linen must be laundered or changed promptly after each use. Separate enclosed cabinets with doors or covers must be provided for the storage of clean and soiled linen and must be plainly marked "Clean Linen" and "Soiled Linen."

(e) Living Quarters Prohibited. No person may be permitted to reside within any massage establishment at any time. No kitchen facilities may be provided within any massage establishment, and no food of any kind may be prepared for sale or sold in the massage establishment. The sale of prepackaged herbs and lotions is permitted; provided, that no more than 10 percent of the floor area is dedicated for that use.

(f) Alcoholic Beverages/Drugs. No person may enter, or remain in, any part of a massage establishment while in possession of, consuming, using, or under the influence of, any alcoholic beverage or controlled substance. The permittee and manager are responsible to ensure that no such person enters or remains upon the premises of the massage establishment. Service or possession of alcoholic beverages by the establishment or any other person on the premises of the establishment, including the area beyond the reception area, is prohibited.

(g) Recordings. No electrical, mechanical, or other device may be used by the permittee or any employee of a massage establishment for audio or video recording, or for monitoring the conduct of a massage or any conversation or other sounds in the massage rooms.

(h) Employee Records. The permittee or manager of the massage establishment must keep a complete and current list of the names and residence addresses of all massage technicians and employees of the massage establishment, and the name and residence addresses of the manager or managing employee who is designated to be primarily in charge of the operation of the massage establishment. This roster must be kept on the premises for immediate inspection by officials charged with enforcement of this section.

(i) Coverings. Each massage establishment must provide to all patrons clean, sanitary, and opaque nontransparent coverings capable of covering the patron's specified anatomical areas, including the genital area, anus and female breasts. No common use of these coverings is permitted, and reuse of these coverings is prohibited unless properly cleaned.

(j) Client Records. Every massage establishment must require all patrons to print and sign a register book in a legible manner. Records must be kept of the dates and hours of each massage treatment or service, the name and address of the patron, the name of the massage technician administering that service, and a description of the massage treatment or service rendered. A short medical history form must be completed by the permittee to determine whether the patron has any physical condition which may be adversely affected by the massage. These records must be prepared prior to administering any massage or treatment and must be retained on the premises for a period of 24 months after the treatment or service. These records must be open to immediate inspection only by officials charged with enforcement of this section and for no other purpose. Any unauthorized disclosure or use of that information by any officer or employee of the City constitutes a misdemeanor.

(k) Hours of Operation. No person may operate a massage establishment or administer a massage in any massage establishment, or as an accessory use, between the hours of 10:00 p.m. and 7:00 a.m. A massage that is commenced anytime before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons, and visitors must be excluded from the massage establishment or the massage area between 10:00 p.m. and 7:00 a.m.

(l) Advertising. No massage establishment or other business that is issued a permit under this section may place, publish, distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably

suggest to prospective clients or customers that any service is available other than those services described in this section, nor may any massage establishment employ language in the text of that advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this section.

(m) Persons with Disabilities. All massage establishments must comply with all state and federal laws and regulations relating to persons with disabilities.

(n) Doors. All front, reception, hallway, or front exterior doors (except back or rear exterior doors used for employee entrance to and exit from the massage establishment) must remain unlocked during business hours. No massage may be given within any cubicle, room, booth, or any other area within a massage establishment that is fitted with a door capable of being locked, unless the only door is an exterior door.

(o) Tinted or “One-Way” Glass. No massage establishment may be equipped with tinted or “one-way” glass in any room, office or store front window.

(3) Exception. The provisions of this subsection, facility and operating requirements for a massage establishment, are not applicable to and may not be construed as applying to massage establishments or businesses that are sole proprietorships or to massage establishments or businesses that employ or use only persons certified to provide massage services pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code and who are practicing massage consistent with the requirements therein.

(G) Change of Management or Ownership.

(1) Every permittee of a massage establishment must immediately report to the Director any change of ownership or management of the massage establishment, including, but not limited to, the change of manager or other person primarily in charge, a change in the mailing address of the owner, permittee, manager or other person primarily in charge, a change in stockholders holding more than five percent of the stock of the corporation, changes in officers, directors or partners, changes in the mailing address of the officers, directors or partners, any change of name, style, or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage establishment. A change in the location of any premises will require a new application for a massage establishment.

(2) No massage establishment permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment, will be deemed to constitute a

voluntary surrender of that permit, and that permit will thereafter be null and void; provided, however, that if the permittee is a partnership, and one or more of the partners dies, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of the permit, and, in such case, upon notification to the Director, the permit will be placed in the name of the surviving partners. A massage establishment permit issued to a corporation will be terminated when either: (i) any outstanding stock of the corporation is sold, transferred, or assigned after the issuance of a permit; or (ii) any stock authorized but not issued at the time of the granting of the permit is thereafter issued, sold, transferred, or assigned. No massage technician permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons.

(H) Permit Application – Massage Technicians. No person may perform or administer a massage, or advertise to provide massage services in the City, without first obtaining a permit issued by the City pursuant to the provisions set forth below. A permit is valid as provided for in PMC 5.04.230, unless earlier revoked or suspended. The required permit is in addition to any business license required by this code. In addition to the information required by PMC 5.04.140, an application for a massage technician permit must include the following information, as applicable:

(1) The primary business location at which the applicant will be working as a massage technician, including the full name of the business, street address, and all telephone numbers associated with that business location. If the massage technician will be providing massage at more than one location, the primary business location must be identified as well as all other locations, including the names, addresses, and telephone numbers of those other locations;

(2) The full true name and any other name used by the applicant;

(3) The present address and telephone number, and all previous addresses of the applicant for the last 10 years immediately prior to the date of application;
(4) Written proof of the applicant's age, height, weight, sex, color of eyes and hair, and date of birth;

(5) Two identification photographs at least two inches by two inches taken in the last six months, and the applicant's fingerprints;

(6) The employment history or experience of the applicant in the massage or similar business for the last 10 years immediately preceding the date of application, including, but not limited to, the massage or similar business history and experience in this City or any other city or state;

(7) Whether the applicant has had any other permit or license as a massage technician issued by an agency, board, city, county, territory, or state; the date of issuance of that permit or license, and whether the permit or license was denied, revoked or suspended, and the reason therefor. That information must include the business activity or occupation engaged in by the applicant subsequent to any suspension or revocation;

(8) All criminal convictions, including ordinance violations and pleas of nolo contendere, within the last 10 years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding for traffic violations, and a statement as to the date and place of each such conviction and reasons therefor;

(9) Documentation of the applicant's experience as a practicing massage technician, as applicable;

(10) Proof of matriculation from a "recognized school of massage," as defined in subsection (A) of this section;

(11) Proof of membership in a "qualified massage association," as defined in subsection (A) of this section;

(12) Authorization for the City, its agents and employees, to seek verification of all information contained in the application;

(13) Such other information as may be deemed necessary by the Director or the Sheriff's Department;

(14) A statement in writing, signed and dated by the applicant, declaring under penalty of perjury that all information contained in the application is true and correct and that all provisions of this section will be adhered to.

(I) Massage Technician – Permit Issuance and Denial. Upon receipt of a written application, the Director will have 60 days to conduct an investigation to ascertain whether the permit should be issued. The Director must forward a recommendation to the City Council, which has the authority to issue the permit unless it makes any of the following findings:

(1) The applicant has, within 10 years preceding the date of the application, been convicted of any of the following:

(a) A violation of California Penal Code Section 266(h), 266(i), 314, 315, 316, 318, or subsection (a) or (b) of Penal Code Section 647, or any other provisions of law that require

a person to register under the provisions of Penal Code Section 290, or where the prosecution accepted a plea of guilty or nolo contendere to a charge violating Penal Code Section 415, or any lesser included offense, in satisfaction of or as a substitute for any of the previously listed crimes,

(b) A violation of Health and Safety Code Section 11550, or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058,

(c) Conviction for an offense in any other state, which offense is the equivalent of any of the above referenced offenses;

(2) The applicant has been convicted of an act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are related to the qualifications, functions or duties of a massage technician;

(3) The applicant has had a massage operator or massage technician permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county, or state within 10 years prior to the date of application;

(4) The applicant has made false, misleading or fraudulent statement(s) or omission(s) of fact to the City in the permit application process;

(5) The application does not contain all of the information required by subsection (H) of this section;

(6) The applicant has not satisfied the requirements of this section within the time specified.

If the application is denied for failure to comply with subsection (I)(4) or (5) of this section, the applicant may not reapply for a period of 12 months from the date the application was denied.

(J) Massage Technicians – General Provisions. All massage technicians must comply with the following conditions and any other conditions specified by the City Council in connection with the issuance of a permit:

(1) No massage technician may massage the genital or anal area of any patron, or the breasts of any female patron. No massage technician, while performing any task or service associated with the massage business, may be present in any room with another

person unless that person's genitals, anus, or, in the case of a female, her breasts, are completely covered by a fully opaque nontransparent material.

(2) The massage technician must wear a photo identification card issued by the City at all times when acting as a massage technician in the massage establishment or other approved place of business. The identification card must be worn on the outer clothing with the photo side facing out. If a massage technician changes his or her business address, he or she must, prior to that change, obtain from the Director a new photo identification card and advise the Director in writing of the new business address.

(3) Massage technicians may not perform any massage at any location other than the location specified in the permit.

(4) While on duty, the massage technician may not use any name other than that specified on the photo identification card.

(5) Massage technicians must be fully clothed at all times. Clothing must be of a fully opaque, nontransparent material and provide complete covering from mid-thigh to three inches below the collar bone.

(6) The massage technician shall consent to the inspection of the massage establishment and occupied massage rooms by the City's Division of Building and Safety and Code Enforcement Department, Fire Department, Sheriff's Department and the Health Department for the purpose of determining that the provisions of this article and other applicable laws or regulations are met.

(7) The massage technician must consent to the inspection of the occupied massage room or areas by the City's Division of Building and Safety, Code Enforcement Department, Fire Department, Sheriff's Department, and the Health Department for the purposes of determining that the provisions of this section and other applicable laws or regulations are met.

(8) No massage technician permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons.

(9) The massage technician must comply with all provisions of this section and any applicable provisions of this code.

(K) Corporate Massage Businesses.

(1) Any person desiring to perform corporate massage, as defined in subsection (A) of this section, must first be conducting business at a fixed location that has a massage establishment permit or that is authorized to provide massage as an accessory use.

(2) Corporate massage may be performed only by a person who possesses a valid massage technician permit issued by the City.

(3) The massage technician or massage establishment offering corporate massage must have a signed contract for service at each location where the service is to be provided, and copies of all contracts must be provided to the City for review upon submittal of the business permit application. The contract must specify the location, days and times the service is to be offered.

(4) Corporate massage must be conducted at a commercial or industrial place of business and must be administered only to the employees of that business.

(5) Corporate massage must be provided only in a public area, to which all employees are provided free access.

(6) Corporate massage must be offered at a specified time and day at each location and may not be offered at any other time. In no event may corporate massage be permitted or offered between the hours of 9:00 p.m. and 7:00 a.m.

(L) Fees.

(1) The City Council will establish by resolution, and may from time to time amend, the fees for the administration of this section. Fees required by that resolution are in addition to any other fees required under other sections of this code.

(M) Existing Permits/Compliance.
(1) Commencing on the effective date of the ordinance amending this section, permits will be issued in accordance with the provisions of this section.

(2) All persons holding existing massage establishment permits or massage technician permits will have one year from the effective date of the ordinance amending this section to comply with all requirements of this section.

(N) Duration of Permits.

(1) Permits for massage establishments and massage technicians will be renewed to coincide with the duration of permits issued as provided for in PMC 5.04.230; provided, that the applicant continues to meet the requirements of this section.

(2) A renewal application for an existing permit must be filed with the Director before the expiration date of the existing permit. Temporary permits will not be issued, and renewal applications must be filed no later than 60 days prior to the expiration of the permit to prevent a lapse of the permit.

(3) Renewal applications will require such information as may be required by the Director to update the information contained in the original permit application and to conduct an investigation to ascertain whether a renewal should be issued. The Director must forward a recommendation to the City Council, which has the authority to renew a permit, as provided for in subsections (D) and (I) of this section. The appropriate filing fee must accompany the application for renewal.

(O) Suspension, Revocation and Nonrenewal.

(1) Revocation, Suspension and Nonrenewal of an Operator's Permit.

(a) The City Council may suspend a massage establishment permit for a period of 30 days for each violation of the provisions of subsection (E) (massage establishments – general provisions) or (F) (massage establishment – facility and operating requirements) of this section or on the grounds that the applicant or permittee has failed to comply with any of the permit conditions or other requirements of this section as determined by the Director and recommended to the City Council by the Director. If a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period.

(b) The City Council may revoke or refuse to renew a massage establishment permit under the following circumstances: (i) facts exist that would support findings for denial of a permit under any provision of subsection (D) of this section; or (ii) there is a subsequent violation of any provision of subsection (E) or (F) of this section within one year following suspension of the permit under subsection (O)(1)(a) of this section; or (iii) the permittee has demonstrated its inability to operate or manage the massage establishment in a lawful manner, thereby necessitating one or more responses by Law Enforcement Officers.

(c) The Director must notify the applicant, permittee, or manager in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant, permittee, or manager with a notice of intent to suspend, revoke

or refuse to renew a permit. This notice must state the reasons for the recommendation and date the City Council will consider the recommendation.

(2) Revocation, Suspension and Nonrenewal of a Massage Technician's Permit.

(a) The City Council may suspend a massage technician permit for a period of 30 days for each violation of the provisions of subsection (J) (massage technician – general provisions) of this section or on the grounds that the applicant or permittee has failed to comply with any of the permit conditions or other requirements of this section as determined by the Director and recommended to the City Council by the Director if a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period.

(b) The City Council may revoke or refuse to renew a massage technician permit under the following circumstances: (i) facts exist that would support findings for denial of a permit under any provision of subsection (I) of this section; or (ii) there is a subsequent violation of any provision of subsection (J) of this section within one year following suspension of the permit under subsection (O)(2)(a) of this section; or (iii) the permittee has demonstrated its inability to conduct massage services within a massage establishment in a lawful manner, thereby necessitating one or more responses by Law Enforcement Officers.

(c) The Director must notify the applicant or permittee in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant or permittee, with a notice of intent to suspend, revoke or refuse to renew a permit. This notice must state the reasons for the recommendation and date the City Council will consider the recommendation.

(3) Notice.

(a) If the City Council determines that grounds exist for the suspension, revocation, or nonrenewal of a permit, the Director must serve the applicant, permittee, or manager in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant, permittee or manager, with a notice of denial or notice of suspension, revocation or refusal to renew permit. This notice must state the reasons for the action and the effective date of the decision.

(4) Violation and Penalty.

(a) Every person, who is subject to this section, and who violates any of the provisions of this section by administering a massage, or by operating a massage establishment, or by

advertising the availability of massage, without first obtaining a permit and a business license from the City to do so, or who violates any other provisions of this section is guilty of a misdemeanor.

(b) Any massage establishment that is operated, conducted, or maintained contrary to the provisions of this section may be declared to be unlawful and a public nuisance, and the City, in addition to or in lieu of prosecuting a criminal action, may commence an action or proceeding to abate that public nuisance in the manner provided by law, and to restrain and enjoin any person from operating, conducting, or maintaining a massage establishment contrary to the provisions of this code.

5.04.450 ~~Dance halls and dances~~ Pawnbrokers and secondhand dealers

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Private dance" means a recreational dance at a private dance hall which is sponsored or conducted by any person other than the permittee of the private dance hall.~~

~~(2) "Private dance hall" means a business establishment that provides recreational dancing facilities, either as its main purpose, or as an incident thereto, for its members or their bona fide guests.~~

~~(3) "Public dance" means a recreational dance at a public dance hall which is sponsored or conducted by any person other than the permittee of the public dance hall.~~

~~(4) "Public dance hall" means a business establishment that is open to the public and that provides recreational dancing facilities, either as its main purpose, or as an incident thereto, for members of the public.~~

~~(5) "Recreational dance" or "recreational dancing" means dancing for purposes of amusement or diversion. "Recreational dancing" includes, but is not limited to, social dancing and does not include a dance performance for purposes of entertaining an audience.~~

~~(6) "Special dance" means an individual public dance or private dance sponsored or conducted by any person, other than the permittee of a public or private dance hall, which dance, if authorized, will result in not more than three such dances being conducted by such applicant in any three-month period.~~

~~(7) "Youth dance" means a public or private dance to which persons between the ages of 15 and 21 are admitted and which is sponsored or conducted by any person other than the permittee of a public or private dance hall.~~

~~(B) Application Information.~~

~~(1) Procedure. In addition to the information required in PMC 5.04.140, the following information shall also be required of any applicant for a business permit to conduct a public or private dance at a public or private dance hall or to conduct a special dance or a youth dance:~~

~~(a) The names and addresses of the persons who have authority or control over the location for which the permit is requested, and a brief statement of the nature and extent of such authority or control;~~

~~(b) The name and address of the owner of the premises upon which the permitted activity is to be conducted, if the applicant is leasing such premises from the owner; and~~

~~(c) Whether the permittee intends to conduct the private or public dance as a youth dance.~~

~~(2) Special Dance Information.~~

~~(a) In addition to the information required by PMC 5.04.140, and subsection (B)(1) of this section, an applicant for a business permit to conduct a special dance shall specify the number of dances held within the three-month period immediately preceding the date of the application.~~

~~(b) An application for a special dance permit shall be filed within 45 days of the date on which the dance is to be held, unless the Director shortens that period of time upon a showing of good cause.~~

~~(c) A special dance permit may only be issued if no more than three such dances will be held in any three-month period. A separate permit shall be issued for each special dance and a separate application shall be filed for each such dance, in accordance with the provisions of this section.~~

~~(C) Operating Requirements.~~

~~(1) Hours of Operation. A public or private dance may be conducted at a public or private dance hall and a special dance may be conducted at a business establishment only between the hours of 7:00 a.m. and 2:00 a.m. of any day unless the City Council~~

~~specifically authorizes otherwise upon a showing of good cause and that authorization is expressly set forth on the business permit.~~

~~(2) Exits. No permit may be issued pursuant to this section to any applicant if the location for which the permitted activity is being sought does not maintain unlocked doors with free and easy access sufficient to assure adequate ingress and egress in the event of an emergency.~~

~~(3) Lighting.~~

~~(a) Every establishment at which a public, private, special or youth dance is held shall be illuminated throughout at an intensity of at least three foot-candles during all hours of operation except while a floor show is in progress.~~

~~(b) If an establishment at which a permitted public, private, special or youth dance is held, owns or operates an adjacent parking lot, that lot shall be illuminated throughout to an intensity of at least two foot-candles.~~

~~(4) Manager Required. Any public dance, private dance, special dance or youth dance shall have a responsible person on the premises to act as manager and supervise employees at all times during which the dance is ongoing. Such manager shall be permitted pursuant to PMC 5.04.050.~~

~~(5) Number of Employees.~~

~~(a) Every establishment at which a public, private, special or youth dance is conducted, having a capacity of 200 persons or less, shall provide at least one employee in constant attendance during the hours of operation of the public, private, special or youth dance. Such establishment shall provide at least one additional employee for each incremental gain in capacity of 100 persons.~~

~~(b) These employees shall be responsible for maintaining order during the hours of operation of the public, private, special or youth dance, and checking the admission of minors, where applicable.~~

~~(c) The Director may require additional employees at any dance hall or establishment as the Director deems necessary.~~

~~(6) Age Restrictions.~~

~~(a) Generally. No person under 21 years of age shall be allowed into an establishment permitted for dance under this section unless:~~

~~(i) The establishment is a bona fide hotel, cafe or other public eating place where meals are regularly served and where a public dance or entertainment is held; or~~

~~(ii) The establishment permitted for dance does not serve or allow to be consumed alcoholic beverages on the premises.~~

~~(b) Youth Dances. No alcoholic beverages shall be sold or consumed at any establishment at which youth dances are conducted.~~

~~(7) Readmission to Dance. A person permitted under this section shall not readmit into any establishment or event any person who has left such dance unless either:~~

~~(a) An admission charge not less than that charged to patrons entering such dance establishment or event for the first time is again paid; or~~

~~(b) The permit specifically states that such readmission may be allowed.~~

~~(8) Inspection Authority. Any City official or employee authorized to enforce the provisions of this chapter or this code may conduct an inspection of the premises permitted under this section at any reasonable time to ensure compliance with the provisions of this chapter.~~

~~(9) Employee Activities Prohibited. Employees shall not solicit or accept drinks from customers. (Ord. U-1030 §§ 16, 17, 1993; Ord. 898 § 2, 1990)~~

(A) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) “Builders’ tools” means all tools customarily used in the construction, alteration, or repair of buildings.

(2) “Coin dealer” means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial-grade ingots of gold, or silver, or other precious metals.

(3) “Pawnbroker” means any person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan.

(4) “Secondhand dealer” means and includes any person, copartnership, firm or corporation whose business includes buying, selling, trading, accepting for sale or consignment, accepting for auctioning or auctioning secondhand tangible personal property. A “secondhand dealer” does not include a coin dealer or participants at gun shows or events, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, who are not required to be licensed pursuant to Section 12071 of the Penal Code, who are acting in compliance with the requirements of Section 12070 and subdivision (d) of Section 12072 of the Penal Code, and who are not gun show traders, as described in paragraph (5) of subdivision (b) of Section 12070 of the Penal Code.

(5) “Tangible personal property” has the same meaning as set forth in Section 21627 of the Business and Professions Code of the state of California.

(B) Application Information. In addition to the information required by PMC 5.04.140, every applicant for a business permit to operate as a pawnbroker or a secondhand dealer shall provide the following information, as applicable:

(1) The applicant’s age, height, weight, sex, and color of hair and eyes;

(2) The applicant’s current address and prior addresses within the 12 months preceding the date of the application;

(3) Whether the applicant has ever conducted a similar business in the City or elsewhere and the name under which the applicant conducted such similar business;

(4) Fingerprints and photographic identification, as defined in PMC 1.04.100; and

(5) A copy of the applicant’s current secondhand dealer or pawnbroker license issued by the state of California.

(6) Security Plan Required. The applicant shall submit a security plan. The plan should detail systems that the tenant intends on installing to protect patrons, visitors, employees, and company property/assets on site. The plan shall address issues such as safes to be installed, alarm systems, deployment of any security personnel, funds-transportation measures, hours of operation, shift personnel staffing, CCTV applications, type of loss-prevention/crime-prevention training provided to employees, and any other applicable measures.

(C) Operating Requirements.

(1) Hours of Operation. No pawnbroker or secondhand dealer, nor any employee thereof, shall accept any pledge, or loan any money for personal property, or purchase or receive any goods, wares or merchandise, or any article or thing, or in any manner whatsoever engage in or conduct business as a pawnbroker or secondhand dealer between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day.

(2) Reporting. Every permittee under this section shall comply with Section 21628 et seq. of the Business and Professions Code or Section 21208 et seq. of the Financial Code.

(3) Any business who buys or receives as a pledge any builders' tools, as defined by this section, shall comply with Sections 21550 et seq. of the Business and Professions Code.

(4) Disposal of Property. Every permittee under this section shall be subject to and shall comply with the requirements of state law for holding and inspection of property.

(5) No transactions that require reporting under Section 21628 of the Business and Professions Code shall be engaged in with any person under 18 years of age.

5.04.460 ~~Entertainment~~ Sidewalk vending

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Entertainment" means and includes, but is not limited to, any act, play, review, pantomime, scene, movie, song, dance act, song and dance act, exhibition, dancing for compensation, or poetry recitation, performed for the benefit of the public, either at a private or public establishment. "Entertainment" as used herein does not include mechanical music alone.~~

~~(2) "Adult-oriented entertainment" means any entertainment in an adult arcade, adult cabaret, adult motion picture theater, adult theater, or modeling studio, as those terms are defined in PMC 5.04.400(B)(1).~~

~~(B) The requirements of this section shall be inapplicable to adult-oriented entertainment which shall be subject to the permit and regulatory requirements of PMC 5.04.400 (adult-oriented business).~~

~~(C) Application Information. In addition to the information required by PMC 5.04.140, the application for an entertainment permit shall include the following information:~~

~~(1) The names and addresses of the persons who have authority or control over the location for which the permit is requested, and a brief statement of the nature and extent of such authority or control;~~

~~(2) The name and address of the owner of the premises upon which the permitted activity is to be conducted, if the applicant is leasing such premises from the owner;~~

~~(3) Whether the entertainment to be provided is adult-oriented entertainment; and~~

~~(4) The duration of the entertainment permit requested by the applicant. The Director is specifically authorized to issue a one-day entertainment permit, subject to the permittee's compliance with all applicable provisions of this section.~~

~~(D) Operating Requirements.~~

~~(1) Hours of Operation. Entertainment, excluding adult-oriented entertainment, may be provided at an establishment permitted to provide entertainment in any location for which it is permitted except between the hours of 2:00 a.m. and 7:00 a.m. unless the City Council specifically authorizes otherwise upon a showing of good cause and that authorization is expressly set forth on the business permit for the permitted activity.~~

~~(2) Exits. No permit may be issued pursuant to this section to any applicant if the location for which the permitted activity is being sought does not maintain unlocked doors with free and easy access sufficient to assure adequate ingress and egress in the event of an emergency.~~

~~(3) Lighting.~~

~~(a) Every business establishment at which permitted entertainment, excluding adult-oriented entertainment, may be provided shall be illuminated throughout at an intensity of at least three foot-candles during all hours of operation except while a floor show is in progress.~~

~~(b) Every business establishment at which permitted entertainment, excluding adult-oriented entertainment, may be provided shall, if it owns or operates an adjacent parking lot, provide illumination of at least two foot-candles throughout such parking lot.~~

~~(4) Manager Required. All business establishments permitted under this section shall have a responsible person on the premises to act as manager at all times during which the establishment is open. Such manager shall be permitted pursuant to PMC 5.04.040.~~

~~(E) Prohibitions – Revocation.~~

~~(1) Except for entertainment activities or performances conducted in an adult business operating in compliance with PMC provisions regulating such activities and performances, any entertainment activities or performances which present an entertainer in a semi-nude state or reveal specified anatomical areas, or include performances which either: (a) are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities; and/or (b) feature entertainers who appear semi-nude, as defined in the City adult business ordinances in the PMC, are expressly prohibited.~~

~~(2) Any violation of this section shall result in a denial, revocation, or suspension of an applicable entertainment permit following the procedures set forth in Chapter 5.04 PMC and all applicable consequences of such denial, revocation, or suspension apply as provided in PMC 5.04.210 and 5.04.320 and related sections of this code.~~

~~(3) The City may enforce any violation of this section by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy. (Ord. 1605 § 40, 2023; Ord. 1108 § 2(c), 1997; Ord. U-1000 § 1, 1992; Ord. 915 § 3, 1991; Ord. 898 § 2, 1990)~~

(A) Definitions. As used in this section, the terms listed below shall have the following meaning assigned to them:

(1) “Cart” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

(2) “Certified farmers’ market” means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

(3) “Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(4) “Sidewalk vendor” means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path. Sidewalk vendors include roaming sidewalk vendors and stationary sidewalk vendors.

(5) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(6) “Swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(7) “Vend” or “vending” means operating as a sidewalk vendor.

(B) Applicability. The requirements of this chapter shall not apply to the following persons:

(1) Persons delivering goods, wares, merchandise, or food upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution.

(2) Persons selling goods, wares, merchandise, or food from a motorized vehicle, including food trucks and ice cream trucks.

(C) Business License and Special Business Permit Required.

(1) No person shall operate as a sidewalk vendor without first obtaining, and at all times maintaining, a valid City business license in accordance with PMC 5.04.050 and related sections of Chapter 5.04 PMC, and complying with all requirements of the business license, unless such person qualifies for an exemption under Chapter 5.04 PMC.

(2) No person shall operate as a sidewalk vendor without first obtaining, and all times maintaining, a special business permit in accordance with this section and complying with all requirements of the permit.

(3) The special business permit shall be valid for one year unless revoked or suspended prior to expiration. An application to renew a special business permit under this section shall be made not less than 30 days prior to the expiration of the current permit. A valid business license shall be applied for or renewed concurrently with the special business permit each year.

(4) A separate business license and special business permit shall be required for each cart.

(D) Requirements for Permit Application. An application for a special business permit for sidewalk vending shall include all of the following, to the extent applicable:

(1) The name, address, and telephone number of the applicant and each person who will operate the cart.

(2) A photo identification of the applicant and each person who will operate the cart.

(3) A description of the cart, including the dimensions of the cart, and a photograph of the cart.

(4) A complete list of the food or merchandise to be sold.

(5) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.
(6) The vendor's California seller's permit number (California Department of Tax and Fee Administration sales tax number).

(7) A City of Palmdale business license.

(8) A copy of any license or permit required from any other state or local agency that is required by law, including, but not limited to, a copy of any required permit from the county health department, if required.

(9) A certification by the applicant that to his or her knowledge and belief, the information contained in the application is true.

(E) Identification Numbers – Confidentiality. Notwithstanding any other requirement in this code, an applicant for a business license or special business permit to operate as a sidewalk vendor shall not be required to submit a social security number for the issuance of such license or permit. In lieu of an otherwise required social security number, the City shall accept a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number along with the permit application, which must be provided at the time of application. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the license or permit program or to comply with a State law or State or Federal court order.

(F) Operational Standards.

(1) Each cart used by a sidewalk vendor must display a valid special business permit sticker at all times, which shall be issued by the City.

(2) All sidewalk vendors shall comply with the terms and conditions of the special business permit and shall not sell any food or merchandise that was not listed in the special business permit application.

(3) No stationary sidewalk vendor may operate in any residential zone; however, roaming sidewalk vendors shall not be prohibited from operating in such zones.

(4) In order to preserve the peace, safety, and tranquility of residential neighborhoods, no roaming sidewalk vendor may operate in any residential zone earlier than sunrise or later than sunset.

(5) In order to prevent obstructions of the public right-of-way, the total display area footprint of the cart, including the cart itself and any accompanying display, signage, or related items, shall not exceed a length of 72 inches, a width of 54 inches, or a height, including roof, awning, or canopy, of 78 inches.

(6) In order to prevent obstructions of the public right-of-way, no sidewalk vendor may set up or allow the use of an additional structure, including a table, crate, carton, or rack, to increase the selling or display capacity of the cart unless such items are explicitly allowed in the special business permit obtained by the sidewalk vendor.

(7) In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall provide a trash receptacle for customers and must ensure proper disposal of customer and vendor trash. The trash receptacle must be large enough to accommodate customer trash without resort to existing trash receptacles located on any block for use by the general public. A sidewalk vendor may not dispose of customer trash in existing trash receptacles on sidewalks.

(8) In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall maintain a clean and trash-free area, including a sanitized and neat appearing cart, within a 10-foot radius around the vendor's cart during hours of operation and shall ensure that such area is clean and trash-free before relocating or closing.

(9) In order to prevent damage to public property and prevent obstructions of the public right-of-way, no cart may be chained or fastened to any pole, sign, tree, or other object in the public right-of-way.

(10) In order to preserve the safety of the public, and prevent misuse of carts, no cart may be left unattended at any time.

(11) In order to preserve the safety of the public, to prevent misuse of carts, and to prevent obstructions of the public right-of-way, no cart may be stored, parked, or left overnight on any public street or right-of-way, or in any public park or other public property.

(12) In order to preserve the safety of vehicular travelers, no sidewalk vendor may solicit business from or conduct business with persons in motor vehicles.

(13) In order to preserve the safety of vehicular travelers and pedestrians, and to preserve public peace and welfare, no cart may be outfitted with any equipment, signage, or mechanism that endangers or detracts from the health, safety, or welfare of the public by causing an excessive distraction to motorists or interfering with nearby residences, business, or pedestrians including, but not limited to, sound amplification, flashing lights, smoke, steam, bubbles, gas-powered generators, or excessive fumes.

(14) In order to preserve the safety of vehicular travelers and pedestrians, any cart operated before sunrise or after sunset, or in location with insufficient lighting, shall be equipped with sufficient lighting or reflectors to alert pedestrians and vehicular travelers to the presence of the cart.

(15) In order to prevent obstructions of the public right-of-way, all signage related to the vending operation shall be affixed to the cart, or otherwise shall be in compliance with the zoning code.

(G) Location of Carts. In order to ensure access to public rights-of-way by pedestrians and emergency personnel, and avoid interference with vehicular traffic, certified farmers' markets, swap meets, and City-permitted special events, sidewalk vendors shall not operate in the following areas of the public right-of-way:

(1) Any area other than a public sidewalk or pedestrian path.

(2) Within 15 feet of a fire hydrant, fire call box, or other emergency facility.

(3) Within 10 feet of an entrance to or emergency exit of any building or business during the hours that the building or business is open to the public.

(4) Within 15 feet of the outer edge of a driveway or driveway apron.

(5) Within 15 feet of a transit stop.

(6) Adjacent to any marked loading zone or bus zone.

(7) Within five feet of a curb return.

(8) Any location that would impede entering or exiting a parked vehicle.

(9) Any location that impedes the flow of pedestrian traffic by reducing the clear space to less than four feet or impedes access to or the use of abutting property, including, but not limited to, residences and places of business.

(10) Within 100 feet in any direction of the nearest vendor or concessionaire participating in a certified farmers' market or swap meet during the operating hours of the certified farmers' market or swap meet.

(11) Within 100 feet of a City-permitted special event including, but not limited to, parades, concerts, and movie filmings, unless vendor has received a permit to vend as part of the event. For moving events, vending shall be prohibited within 100 feet of any portion of the approved event route. For stationary events, vending shall be prohibited within 100 feet of the parcel boundary for the location of the event.

(12) Within 200 feet of any public or private school grounds between 7:00 a.m. and 4:00 p.m. on school days, and during any other time when in use and creating high vehicular traffic, such as uses for major sporting events.

(13) Upon or within any roadway, median strip, or dividing section.

(14) Any public sidewalk location when the straight path would not allow for 48 inches, or as the law updates, of clear width walking space of any sidewalk to be in compliance with Americans with Disabilities Act (ADA) regulations.

(15) Any public sidewalk where there is a 180 degree turn path for sidewalk ramps and corner curbs when the location would not allow for 42 inches approaching the turn, 48 inches at the turn, and 42 inches leaving the turn, or as the law updates, of clear width walking space of any sidewalk to be in compliance with ADA regulations.

(H) Special Requirements for the Sale of Food. All sidewalk vendors that prepare or sell food must be in compliance with all county and State permitting and licensing requirements for the preparation or sale of food.

(I) Penalties. For purposes of this section, "sidewalk vending program" refers to the provisions of subsections (F) through (H) of this section and PMC 8.24.210, inclusive, and the requirement to obtain a special business permit pursuant to PMC 5.04.590(C)(2).

(1) A violation of any provision in subsections (F) through (H) of this section and PMC 8.24.210, inclusive, may only be punished by the following:

(a) An administrative fine not exceeding $100.00 for a first violation.

(b) An administrative fine not exceeding $200.00 for a second violation within one year of the first violation.

(c) An administrative fine not exceeding $500.00 for each additional violation within one year of the first violation.

(d) Rescission of the sidewalk vendor's special business permit for the term of that permit upon the fourth violation or subsequent violations.

(2) Vending without a special business permit may be punished by the following:

(a) An administrative fine not exceeding $250.00 for a first violation.

(b) An administrative fine not exceeding $500.00 for a second violation within one year of the first violation.

(c) An administrative fine not exceeding $1,000 for each additional violation within one year of the first violation.

(3) Upon proof of a valid special business permit, an administrative fine imposed under subsection (I)(2) of this section shall be reduced to the respective administrative fine set forth in subsection (I)(1) of this section.

(4) No other fines, fees, assessments, or financial conditions shall be imposed for violation of the sidewalk vending program other than those imposed by subsections (I)(1) and (2) of this section.

(5) Notwithstanding any other provision of this code, neither a violation of the sidewalk vending program as codified in subsections (F) through (H) of this section and PMC 8.24.210, inclusive, nor a failure to pay an administrative fine, imposed by subsection (I)(1) or (2) of this section shall be punishable as an infraction or misdemeanor.

(6) Any person who receives an administrative fine under subsection (I)(1) or (2) of this section shall have the right to request an ability-to-pay determination.

(a) The City shall give any such person written notice of his or her right to request an ability-to-pay determination as well as instructions and other materials for requesting an ability-to-pay determination at the time that the administrative fine citation is issued.

(b) A right-to-pay determination may be requested at any time following the issuance of the administrative fine citation until the fine is paid, including when payment of the fine is delinquent or has been referred to a collection program.

(c) Upon receipt of a request for an ability-to-pay determination, the City manager or his or her designee shall determine whether such person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code. The determination of the City Manager or his or her designee shall be final.

(d) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the City shall reduce the fine to 20 percent of the amount of the fine originally imposed.

(7) The City Manager may, in his or her discretion, allow a person who receives an administrative fine under subsection (I)(1) or (2) of this section to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(8) Nothing in the chapter shall be construed to limit the City's ability to enforce, or remedies for enforcing, laws of general applicability or other provisions of this code against sidewalk vendors, or to take any other enforcement actions against sidewalk vendors that are not prohibited by state or federal law, or which are allowed by this code.

5.04.470 ~~Escort bureaus and introductory services~~ Mobile vending

~~(A) Definitions. For purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Escort" means:~~

~~(a) Any person who, for compensation, acts as a companion to other individuals, accompanying them to social affairs, places of entertainment, amusement, places of public assembly, or within any private quarters located within the City; or~~

~~(b) Any person who, for compensation, acts as a companion to other individuals, accompanying them in or about any business or commercial establishment, or part or portion thereof, located within the City.~~

~~(2) "Escort bureau" means any business establishment which, for financial compensation, furnishes, or offers to furnish, escorts.~~

~~(3) "Introductory service" means a business which, for compensation, provides or offers a service, the principal purpose of which is to aid individuals to become socially acquainted or otherwise assist individuals to meet for social purposes, or which provides information to individuals about others for the purpose of facilitating their meeting.~~

~~(B) Permitted Services. Escort bureaus, as defined in this section, are prohibited to operate in the City of Palmdale. Introductory services may be permitted in accordance with the provisions of this section.~~

~~(C) Permit Exemption. This section shall not apply to the lawful business of any employment office or employment agency permitted under state law.~~

~~(D) Application Information. In addition to the information required by PMC 5.04.140, an application for a business permit for an introductory service shall contain the following information, as applicable:~~

~~(1) The full names, aliases and residential addresses of all escorts and employees and independent contractors employed by or intended to be employed by the applicant;~~

~~(2) The last two previous addresses of the applicant and each employee;~~

~~(3) The business, occupation, or employment of the applicant, and each employee for the last three years immediately preceding the application;~~

~~(4) The sex, height, weight, hair and eye color of the applicant, and each employee;~~

~~(5) Photographs and fingerprints of the applicant and each employee;~~

~~(6) If the applicant is not the owner of record of the real property upon which the introductory service is or is to be located, the application shall be accompanied by a notarized statement from the owner of record of the property acknowledging that an introductory service is or will be located on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, business telephone number and business address of the owner of record of the property, as well as a copy of the lease or rental agreement pertaining to the premises in which the introductory service is or will be located; and~~

~~(7) A description of the service to be provided.~~

~~(E) Operating Requirements.~~

~~(1) Registration of Employees.~~

~~(a) Every employee of an introductory service shall register with the business license division and no introductory service shall hire or employ any employee who is not registered with the business license division.~~

~~(b) Every introductory service shall, within 24 hours, notify the business license division of every change in personnel of employees.~~

~~(2) Manager Required. Every introductory service permitted pursuant to this section shall hire a manager to oversee the operation of the permitted activity at all hours during which the service is open. Such manager shall be permitted pursuant to PMC 5.04.050, and must sign a statement indicating full knowledge of all applicable regulations.~~

~~(3) Age Restrictions.~~

~~(a) A person conducting an introductory service shall not list or provide any individuals, or their names or addresses, for purposes of introduction or dating, who are less than 18 years of age.~~

~~(b) A person who conducts an introductory service shall not employ or date any person under 18 years of age.~~

~~(4) Record of Transaction.~~

~~(a) Every person managing an introductory service shall keep a record of every transaction showing:~~

~~(i) The names of any individuals introduced, as applicable;~~

~~(ii) The full name, residence address, and telephone number of the patron or customer for whom introduction is made, as applicable. Every effort shall be made to verify the minimum age of youthful-appearing clients.~~

~~(b) The permittee shall keep all such records available for inspection by the Sheriff, any of his deputies, any Police Officer, or any person authorized to enforce the provisions of this code. The permittee shall deliver the records to the City or authorized agent upon request.~~

~~(5) Location. An introductory service may be permitted in the C-3 (General Commercial) Zone, pursuant to the applicable provisions of the zoning ordinance.~~

~~(F) Bond Required.~~

~~(1) At the time of filing an application with the Director, the applicant shall file and thereafter maintain with the City a good and sufficient bond in the aggregate sum of $5,000, running to the City of the use and benefit of interested persons and parties, executed by the applicant and two or more responsible sureties, or a surety company authorized to do business in the state of California, which surety company shall be approved by the Director.~~

~~(2) Recovery for Damage. Any individual who sustains any injury covered by the bond may, in addition to any other remedy at law which the individual may have, bring an action in his or her own name upon the bond for the recovery of any damage sustained by that person. Upon such action being commenced, such bond shall not be void upon first recovery thereon but may be sued upon from time to time until the whole of the penalty shall be exhausted.~~

~~(3) Damages Covered. The bond shall protect patrons or customers of the introductory service from damages arising from any fraud or theft perpetrated by the owners, operators, or employees of such businesses as a result of the operation thereof.~~

~~(G) Suspension or Revocation Conditions. In addition to the grounds specified in PMC 5.04.310, a permit to conduct an introductory service may be suspended or revoked if the Director or the City Council finds:~~

~~(1) That the permittee has committed, caused, encouraged, or condoned the commission of any lewd act or any act of prostitution; or~~

~~(2) That the business has been conducted, in whole or in part, as a subterfuge to facilitate or to conceal the conduct of any unlawful business or practice. (Ord. 1108 § 2(d), 1997; Ord. 915 § 4, 1991; Ord. 898 § 2, 1990)~~

(A) Purpose and Intent. It is the City's responsibility to promote the health, peace, safety, welfare and convenience of all persons in regards to their use and enjoyment of public lands. The City Council finds it necessary to regulate mobile vending for this purpose while ensuring that all such regulations comport with applicable law.

Reasonable regulations are necessary to ensure that mobile vending is operated in accordance with health, safety and traffic laws of the State and the parking ordinances of

the City; do not cause public safety problems by contributing to traffic congestion or by creating pedestrian and vehicular conflicts; and do not disturb the quiet use and peaceful enjoyment of residential neighborhoods. The regulations in this section are enacted to ensure consistency with State law, including Section 22455 of the California Vehicle Code related to ice cream truck vending and California Health and Safety Code Section 114315 et seq. (the "California Retail Food Code") for food handling, as each may be amended.

(B) Definitions. As used in this section, the terms listed below shall have the following meaning assigned to them:

(1) "Food establishment" means any restaurant or grocery store with a permanent storefront location.

(2) "Goods or merchandise" means and includes items and tangible things and products of every kind and description, including any food, produce, and/or beverage items.

(3) "Human powered device" means any device moved by human power, including, but not limited to, any pushcart, wagon, bicycle, tricycle, or other wheeled device or conveyance.

(4) "Ice cream truck" means any motor vehicle requiring license from the California Department of Motor Vehicles which is used to vend at retail:

(a) Prepackaged frozen dairy or water-based food products; or

(b) Soft-serve or hand-dipped frozen dairy or water-based products; irrespective of whether or not the ice cream truck carries other prepackaged food products.

(5) "Mobile food truck" means a motorized vehicle or mobile food unit that should be licensed by the California Department of Motor Vehicles (whether licensed or not), designed and equipped to prepare, or serve, and sell food, and temporarily stored in a location where food items are sold to the general public.

(6) "Pedestrian solicitor" means a person vending goods or merchandise from their person without the use of a vehicle.

(7) "Person" means any natural person, firm, partnership, association, corporation, or other entity of any kind or nature.

(8) “Public property” means any real property, or interest therein, owned, leased, operated, or otherwise controlled by the City other than a street, alley, parkway, or sidewalk.

(9) “Vehicle” means a motorized vehicle or mobile food unit that should be licensed by the California Department of Motor Vehicles (whether licensed or not), designed and equipped to prepare, or serve, and sell food, and temporarily stored in a location where food items are sold to the general public as well as any trailer or other similar apparatus that can be attached to a motorized vehicle whether attached at the time of vending or not, and shall not include any human powered device and shall include an ice cream truck and mobile food truck.

(10) “Vehicle operator” means any person or entity owning a 10 percent or greater interest in, or operating or otherwise controlling, any business involving the vending of goods or merchandise from a vehicle.
(11) “Vend” or “vending” means the sale or offering for sale of any goods or merchandise to the public by a vehicle operator or pedestrian solicitor on a public street, private street open to the public, or other public property.

(12) “Vendor” means any pedestrian solicitor or any vehicle operator, and/or any employee, independent contractor, or other person acting on behalf of or for the benefit of a pedestrian solicitor or vehicle operator, who engages in the act of vending.

(C) Applicability. This section is intended to apply to all vending at any locations within the City. However, it does not apply in the following circumstances:

(1) Sidewalk vending described in PMC 5.04.460 if all legal requirements therein are met.

(2) Contractual or other private arrangement between a vendor and an individual or entity that wishes to have food catered to a specific location on private land and which is not open to the public, subject to the following: the vendor shall possess and at all times display in conspicuous view upon their vehicle, in connection with a vehicle operator, or upon their person, in connection with a pedestrian solicitor, a copy of the contractual document or other private arrangement detailing the terms of the agreement along with the name and contact information of the individual or entity that agreed to have food catered on private lands.

(3) Any person delivering any goods or merchandise by vehicle where such goods or merchandise have been ordered in advance for such delivery from any business located at a permanent location.

(4) Any person vending where such person has been authorized to engage in such activity by a permit, lease, real property license, agreement, or other entitlement issued by the City, State or Federal government for such purpose.

(5) Any person exempted from the provisions of this chapter by any local, State or Federal law, regulation or statute.

(D) Vehicle Operator and Pedestrian Solicitor Permits. Any person desiring to obtain a vehicle operator's permit to conduct or otherwise operate the business of vending goods or merchandise from a vehicle pursuant to this chapter shall file an application with the Business License Division of the Finance Department. Such application shall be accompanied by a nonrefundable application fee in such amount as established by resolution of the City Council. Any such permit shall be valid for one year from date of issuance. The permit may be renewed annually, subject to filing of a new application and payment of a new application fee.

(1) Vehicle Operator. Each permit applicant for a vehicle operator permit shall furnish the following information and documentation in the application:

(a) The street address where the office of the business is or will be located;

(b) The full, true name under which the business will be conducted;

(c) The full, true name and any other names used by the applicant along with a copy of a corresponding California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the permit program or to comply with a State law or State or Federal court order;

(d) The present residence and business addresses and telephone numbers of the applicant, each 10 percent or greater owner of the business, and all persons who will act as a vendor for the applicant, whether as an employee, contractor, or otherwise;

(e) A detailed description of the goods or merchandise which the applicant will vend;

(f) The make, body style, year, VIN number, State license plate number, names and addresses of each registered and legal owner of each vehicle and a copy of a valid vehicle registration for the subject vehicles;

(g) A description of the logo, color scheme, insignia, and any other distinguishing characteristics identifying applicant's business that will appear on each vehicle;

(h) The name, residential address, and telephone number of the applicant and individuals primarily responsible for managing the day-to-day operation of the vending business and/or performing any vending on behalf of the operator along with an email and cellular number for such individuals;

(i) Evidence of compliance with the insurance requirements of the Vehicle Code as to each vehicle; and

(j) The details of any known contractual or other private arrangement between a mobile food truck and an individual or entity that wishes to have food catered to a specific location on private land and which is open to the public. If this section is applicable, the permit application shall include the name and contact information of the individual or entity that wishes to have food catered on private lands as well as a copy of the contractual document or other private arrangement detailing the terms of the agreement.

(2) Pedestrian Solicitor. Each permit applicant for a pedestrian solicitor permit shall furnish the following information and documentation in the application:

(a) The street address where the office of the business is or will be located;

(b) The full, true name under which the business will be conducted;

(c) The full, true name and any other names used by the applicant along with a copy of a corresponding California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the permit program or to comply with a State law or State or Federal court order;

(d) The present residence and business addresses and telephone numbers of the applicant, each 10 percent or greater owner of the business, and all persons who will act as a vendor for the applicant, whether as an employee, contractor, or otherwise;

(e) A detailed description of the goods, merchandise, or services which the applicant will vend;

(f) The name, residential address, and telephone number of the applicant and individuals primarily responsible for managing the day-to-day operation of the vending business

and/or performing any vending on behalf of the pedestrian solicitor along with an email and cellular number for such individuals; and

(g) The details of any known contractual or other private arrangement between a pedestrian solicitor and an individual or entity that wishes to have food catered to a specific location on private land and which is open to the public. If this section is applicable, the permit application shall include the name and contact information of the individual or entity that wishes to have food catered on private lands as well as a copy of the contractual document or other private arrangement detailing the terms of the agreement.

(3) The Business License Division shall be authorized to investigate the truth of the facts set forth in the application. Each application shall be approved or denied within a reasonable amount of time.

(4) Permit Denial. Any permit applied for under the provisions of this chapter may be denied for any of the following causes:

(a) One of the departments or officers performing a review of the permit renewal application has recommended denial of, or the imposition of additional conditions upon, such permit.

(b) If the City finds that the applicant knowingly made any false, misleading or fraudulent statements of material fact in the application for the permit.

(c) The applicant has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State or Federal law.

(d) Failure to comply with the requirements of this section or other provisions of the code by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.

(e) Fees, fines, or other penalties owing the City that are due and payable by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.

(5) Appeal Procedure. Written notice of denial, setting forth the grounds for denial, shall be served on the applicant. Any person aggrieved by a denial of a permit pursuant to this section may appeal such denial to the City Manager or designee pursuant to the procedures set forth in PMC 5.04.280, et. sequentes. To seek an appeal, said person

must submit a written request for an administrative hearing with a statement of why the denial did not merit any of the grounds for denial under subsection (D)(4) of this section to the City Clerk within 10 days after service of notice of the City Manager's or designee's decision. Upon receipt of a timely appeal, the aggrieved party shall be given notice of a hearing and a hearing shall be held pursuant to PMC 5.04.280, et. sequentes.

(6) Each permittee shall notify the Business License Division, in writing, within 10 business days of any change in the required application information under subsections (D)(1) and (D)(2) of this section.

(E) Suspension and Revocation of Permit.

(1) Any vehicle operator's permit or pedestrian solicitor's permit may be temporarily suspended or revoked by the Business License Division for any of the following reasons:

(a) Provision of false information on the permit application.

(b) Failure of the permittee to notify the Business License Division within 10 business days of any change in the information supplied by the permittee upon which issuance of the permit was based, occurring subsequent to the issuance of the permit.

(c) There is substantial evidence of a violation by the permittee, any employee, subcontractor of the permittee, or any other person acting on the permittee's behalf, of this chapter or any other local, State, or Federal law constituting a misdemeanor or felony while in the course of conducting vending operations pursuant to the permit.

(d) While in the course of vending, driving of a vehicle by a vendor not possessing a valid driver's license, or operation of a vehicle found by police inspection to be unsafe and in violation of the Vehicle Code.

(e) The permittee no longer operates in accordance with the information and documentation supplied in connection with the vehicle operator permit application set forth in subsection (D)(1) of this section.

(f) The permittee no longer operates in accordance with the information and documentation supplied in connection with the pedestrian solicitor permit application set forth in subsection (D)(2) of this section.

(g) The permittee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law.

(h) Fees, fines, or other penalties owing the City that are due and payable by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.

(2) Appeal Procedure. Written notice of suspension or revocation, setting forth the grounds for suspension or revocation, shall be served on the offending permittee. The notice shall advise the permittee of the right to file a written appeal. Any person aggrieved by a suspension or revocation of a permit pursuant to this section may appeal such denial to the City manager or designee pursuant to the procedures set forth in PMC 5.04.280, et. sequentes. To seek an appeal, said person must submit a written request for an administrative hearing with a statement of why the suspension or revocation did not merit any of the grounds for suspension or revocation under subsection (E)(1) of this section to the City Clerk within 10 days after service of notice of the City Manager's or designee's decision. Upon receipt of a timely appeal, the aggrieved party shall be given notice of a hearing and a hearing shall be held pursuant to PMC 5.04.280, et. sequentes.

(3) No person whose permit is revoked shall be eligible to apply for a new permit for a period of one year following such revocation.

(4) Notices required or permitted to be served pursuant to this section may be served personally, or by mailing by certified or registered mail with proof of delivery at the residential address of record, or by licensed courier or delivery service with proof of personal delivery, or in any other manner provided by law.

(F) Conditions and Prohibitions. It is unlawful for any pedestrian solicitor or vehicle operator to sell or offer for sale any goods, merchandise, or services upon any public street or private street open to the public, except in accordance with all applicable provisions of this code, all State and Federal laws and regulations, the terms of their City-issued permit, and in compliance with each of the following requirements:
(1) Information Made Available to the Public and City.

(a) Each vendor shall possess and at all times display in conspicuous view upon their person or upon each vehicle, as the case may be, the actual business name and telephone number, and a City business certificate issued pursuant to this title.

(b) Each vendor shall possess and display, upon request by any potential customer or City representative, a vehicle operator's permit or pedestrian solicitor's permit issued pursuant to this chapter, or a full, true and correct copy thereof.

(c) Each vendor causing the sale of or offering for sale any produce or other food item for which a food handling permit or other health permit from the county health department

required by law shall possess and present such required permits. Vendors must at all times display such required permits in conspicuous view upon such vehicle or have on their immediate person ready to present at all times.

(d) Each vendor who enters into a contractual or other private arrangement with an individual or entity that agrees to have food catered to a specific location on private land and which is open to the public shall possess and at all times display in conspicuous view upon their person or vehicle a copy of the contractual document or other private arrangement detailing the terms of the agreement along with the name and contact information of the individual or entity that agreed to have food catered on private lands.

(e) Each vendor shall possess and wear upon their person a City-issued badge, issued in connection with this chapter.

(2) Location.

(a) Vending is permitted only on public streets or private streets open to the public, and is not permitted in or upon any alley, parkway, sidewalk, or other kind of public property. Further, vending with a vehicle is not permitted in residential zones unless said vending is approved by the City in such zone in connection with a validly issued special event permit or temporary use permit, pursuant to PMC 17.27.030, prior to engaging in any residential vending.

(b) No vending shall be permitted within 50 feet of any intersection of two or more streets or any location that may impede a sidewalk or pedestrian traffic.

(c) No vending shall be permitted within 1,000 feet of the front entrance of any public or private elementary, junior high, or high school.

(d) No vending shall be permitted within 1,000 feet of the front entrance of any food establishment.

(e) No vending shall be permitted on City streets with a speed limit at or above 45 miles per hour.

(f) No vending shall be permitted at any public park unless the vending occurs as part of a City-sponsored function and the vendor has applied for and received a written endorsement on the operator permit expressly authorizing such vending.

(g) No vehicle shall be parked, stopped, or left standing in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon the public street.

(h) No vending shall be permitted until the vehicle has been brought to a complete stop and lawfully parked adjacent to the curb.

(i) No vendor shall operate in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon the public street.

(j) Vehicle vending shall be only by means of a vehicle duly registered and licensed by the State with an unladen weight of less than 6,000 pounds.

(k) All vending must ensure the safe and proper disposals of fats, oils, and greases ("FOGs") and be in compliance with applicable disposal regulations, including Los Angeles County Code (LACC), Title 20, Division 2, other laws, regulations, and ordinances concerning proper disposal of FOGs and other industrial wastes and health and safety State, local, and Federal laws.

(3) Sanitation and Trash.

(a) Each vehicle shall be equipped with a trash receptacle of a size adequate to accommodate all trash and refuse generated by vending therefrom.

(b) Each vendor shall pick up and deposit in the trash receptacle on the vehicle all paper, cups, wrapper, litter, or other refuse of any kind that was a part of the goods or merchandise supplied from the vehicle and which has been left or abandoned within 50 feet of such vehicle on any public property, other than in a trash receptacle provided for such purposes. No person shall dispose of any trash or refuse from vending operations in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of the vendor or operator.

(c) Each pedestrian solicitor shall operate within 100 feet of a trash receptacle.

(4) Operation – Hours, Amplified Sounds, Equipment, Prohibited Sales.

(a) Vending is permitted only between sunrise and sunset in residential zones.

(b) Any use of amplified sound-making devices, to advertise, draw attention to, or announce the presence of a vendor, shall also comply with all applicable noise and sound regulations effective within the City.

(c) No vending under this section may utilize chairs, tables, or other equipment unless City approval is given through an issued permit under this section.

(d) It is unlawful for any vendor to sell any item or thing which is otherwise prohibited from being sold within the City, including, but not limited to, any goods or products not identified in the application for a vehicle operator's permit or pedestrian solicitor's permit.

(5) Additional Regulations on Ice Cream Truck Vending.

(a) Safety and Sanitation.

(i) Each vendor shall ensure that the standard warning flashers shall be in operation immediately upon the vehicle stopping to vend and cease operation as the vehicle begins to move after vending.

(ii) Each vendor shall have signs painted or mounted on the front and back of each vehicle using black four-inch-tall letters on a yellow background with a black one-inch border around each sign. The sign on the front and back of each vehicle shall read "CHILDREN CROSSING" and be eight inches high by 48 inches wide. An additional sign or signs shall be painted or mounted on the rear of each vehicle above the first sign and shall read "WARNING" in English, Spanish, and Vietnamese, using the same size letter and paint requirements.

(iii) Each ice cream truck vendor shall pick up and deposit in the trash receptacle on the ice cream truck all paper, cups, wrapper, litter, or other refuse of any kind that was a part of the goods or merchandise supplied from the vehicle and which has been left or abandoned within 50 feet of such vehicle on any public property, other than in a trash receptacle provided for such purposes. No person shall dispose of any trash or refuse from vending operations in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of the vendor or operator.

(iv) Each vendor shall have any other safety equipment and follow any other requirements mandated by the California Vehicle Code.

(b) Operation – Hours, Amplified Sounds, Location, Required Sales.

(i) Hours. Ice cream truck vending is permitted only between sunrise and sunset.

(ii) Amplified Sound Use by Ice Cream Truck Vendors. Any use of amplified sound-making devices, to advertise, draw attention to, or announce the presence of such vendor, shall

also comply with all applicable noise and sound regulations effective within the City in addition to the following:

A. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck when the ice cream truck is stationary.

B. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck after sunset.

C. No person shall use, play or employ any sound, outcry, amplifier, production loudspeaker, or any other instrument or device for the production of sound from an ice cream truck in such a manner to create a disturbance of the peace.

(c) Location.

(i) No vending from such vehicle shall be permitted on City streets with a speed limit above 25 miles per hour.

(ii) No person shall stop to vend from an ice cream truck within 200 feet of another ice cream truck that has already stopped to vend.

(d) Prohibited Sales. Ice cream truck vendors shall only sell frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, prepackaged snack foods, or soft drinks.

(G) Special Events. Nothing in this section shall affect the City's ability to host, sponsor, allow, or authorize special events approved for vending purposes or with vending components.

5.04.480 ~~Fortunetelling~~ Tobacco/smoking product retailer

~~(A) Definitions. For purposes of this section, the following term shall have the following meaning:~~

~~(1) "Fortunetelling" means the practicing or carrying on of any art, profession or business which shall include, but not be limited to, the telling of fortunes, forecasting of futures, or furnishing of any information not otherwise obtainable by, the ordinary process of knowledge, for or without pay. "Fortunetelling" shall include, but not be limited to, "psychic reading," "occult reading," "clairvoyance," "clairaudience," "cartomancy," "psychometry,"~~

~~"phrenology," "spirits," "mediumship," "seership," "prophecy," "augury," "astrology," "palmistry," "necromancy," "mind reading," "tarot card readings," "tea leaves," "telepathy" or other craft, art, science, cards, talisman, charm, potion, magnetism, magnetized article or substance, gypsy cunning or foresight, crystal gazing, and crystal reading of any kind or nature.~~

~~(B) Permit Exemptions.~~

~~(1) This section shall not apply to the licensed practice of psychology, psychotherapy, counseling, hypnotherapy, or any other related healing art which is licensed or regulated pursuant to the California Business and Professions Code.~~

~~(2) This section shall not apply to any person who is engaged solely in providing fortunetelling services to groups by demonstrations of mind-reading, mental telepathy, thought conveyance, or the giving of horoscopic readings at public places and in the presence of and within the hearing of other persons and at which no questions are answered except in a manner to permit all persons present at such public place to hear such answers.~~

~~(C) Application Information. In addition to the information required by PMC 5.04.140, application for a permit for fortunetelling shall contain the following information:~~

~~(1) The last two previous addresses of the applicant;~~

~~(2) Photographs and fingerprints of the applicant and each employee; and~~

~~(3) If the applicant is not the owner of record of the real property upon which the fortunetelling activity is or is to be located, the application must be accompanied by a notarized statement from the owner of record of the property acknowledging that a fortunetelling business or service is or will be located on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name and address of the owner of record of the property, as well as a copy of the lease or rental agreement pertaining to the premises in which the fortunetelling business or activity is or will be located. (Ord. 898 § 2, 1990)~~

(A) Definitions. For the purpose of this Section, the following terms shall have the following meanings:

(1) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale

between relatives, related companies or partners, corporate or other entities which have some or all of the same directors and/or principals, or any sale for which a significant purpose is avoiding the effect of the violations of this section, is not an arm's length transaction.

(2) "Drug paraphernalia" shall have the definition set forth in California Health and Safety Code Sections 11014.5 and 11364.5, as those sections may be amended from time to time.

(3) "Electronic cigarette" shall mean an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. "Electronic cigarette" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

(4) "Flavored electronic cigarette product" shall mean any product used in an electronic cigarette, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice, including but not limited to tobacco, mint, menthol, spearmint, wintergreen, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the product, or the smoke or vapor produced by the product.

(5) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10 percent or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(6) "Self-service display" means the open display or storage of tobacco products, smoking products or tobacco/smoking paraphernalia in a manner that is physically accessible in any way to the general public without assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(7) "Smoking product" means any substance produced or sold to be used for smoking, ingestion, or consumption in cigarettes, cigars, pipes, hookahs, e-cigarettes, or other similar objects.

(8) "Tobacco product" means any of the following: (1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether

smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff. (2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. (3) Any component, part, or accessory of a tobacco product, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

(9) “Tobacco/smoking paraphernalia” means shall mean cigarette papers, wrappers, or blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other instrument or paraphernalia designed for the smoking, preparation, storing, ingestion or consumption of tobacco and other smoking products.

(10) “Tobacco/smoking product retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, in public view, tobacco, tobacco/smoking products or tobacco/smoking paraphernalia. Any person who distributes free or low cost samples of tobacco products, smoking products or tobacco/smoking paraphernalia shall be deemed to be a tobacco/smoking product retailer under this chapter. “Tobacco/smoking product retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco or smoking product, or tobacco or smoking paraphernalia sold, offered for sale, exchanged or offered for exchange.

(11) “Vending machine” as used in this section shall mean a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(12) “Youth decoy” means a person under the age of 18 who is used by the Los Angeles County Sheriff’s Department or any City official or employee authorized to enforce provisions of this chapter to conduct random on-site sting investigations to determine compliance with tobacco retailing laws.

(B) Permits Required.

(1) Any person intending to act as a tobacco/smoking product retailer shall, within one year of the effective date of the ordinance codified in this section, obtain a tobacco/smoking product retailer permit for each location at which tobacco/smoking

product retailing is to occur. This applies to all existing and future tobacco/smoking product retailers in the City.

(2) It shall be unlawful for any person to act as a tobacco/smoking product retailer in the City without first obtaining and maintaining a valid tobacco/smoking product retailer's permit pursuant to this section for each location at which that activity is to occur.

(3) The sale of tobacco/smoking products or tobacco/smoking paraphernalia from other than a fixed location, including but not limited to tobacco/smoking product retailing by persons on foot or from vehicles, is prohibited and no permit shall be issued under this section to any such activity.

(4) Nothing in this section shall be construed to grant any person obtaining and maintaining a tobacco/smoking product retailer's permit any status or right other than the limited conditional privilege to act as a tobacco/smoking product retailer at the location in the City identified in the permit application and/or on the face of the permit. Nothing in this chapter is intended to be construed to render inapplicable, supersede, or affect any other provision of applicable law, including but not limited to any provision of this code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5.

(5) No permit shall be issued to authorize a tobacco/smoking product retailer at a location that is permitted under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on sale" license issued by the California Department of Alcoholic Beverage Control) and no permit shall issue to authorize a tobacco/smoking product retailer at any location offering food for sale for consumption by guests on the premises.

(C) Applications. In addition to the information requirement by PMC 5.04.140, the application for a tobacco/smoking product retailer permit shall contain the following information:

(1) Proof that the location for which a tobacco/smoking product retailer permit is sought has been issued a valid state tobacco/smoking product retailer's permit by the California Board of Equalization.

(2) A signed affirmation by each proprietor that the proprietor is informed of the laws affecting tobacco/smoking product retailer permits. No proprietor may rely on the issuance of a permit as a determination by the City that the proprietor has complied with all laws applicable to tobacco/smoking product retailing.

(3) Whether or not any proprietor or any agent admitted violating or has been found to have violated this section and, if so, the dates and locations of all such violations within the previous five years.

(4) Each permit application must be accompanied by the required permit fee, established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the total cost of both permit administration and permit enforcement, including, for example, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the costs of the regulatory program authorized by this section. Fees are nonrefundable except as may be required by law.

(5) Such other information as the Director deems necessary for the administration or enforcement of this section as specified on the application form required by this section.

(6) A permitted tobacco/smoking product retailer shall inform the Director in writing of any change in the information submitted on an application for a tobacco/smoking product retailer's permit within 10 business days of a change.

(7) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the law's exemptions.

(8) A statement signed by each proprietor that no drug paraphernalia is or will be sold at the business seeking the permit.

(D) Issuance and Renewal of Permit.

(1) Except as otherwise provided herein, upon receipt of a complete application for a tobacco/smoking product retailer's permit and the payment of the applicable permit fee, the Director shall issue a permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(a) One or more of the bases for denial listed in PMC 5.04.200 exists.

(b) The application seeks authorization for tobacco/smoking product retailing that is prohibited pursuant to this section (e.g., mobile vending), that is unlawful pursuant to this code, including without limitation the zoning ordinance, building code, business license ordinance, or that is unlawful pursuant to any other law.

(c) The application seeks authorization for tobacco/smoking product retailing for a proprietor to whom this section prohibits a permit to be issued.

(d) Suspension or revocation proceedings have been initiated by any local, state or federal agency for violations of local, state or federal tobacco control laws within the preceding 60-day period.

(2) Notwithstanding any other provision of this section, prior violations at a location shall continue to be counted against a location and permit ineligibility periods shall continue to apply to a location unless:

(a) The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and

(b) The new proprietor provides the City with clear and convincing evidence that the new proprietor has acquired the location in an arm's length transaction.

(3) Every permit issued under this chapter shall be posted in accordance with PMC 5.04.100.

(4) A tobacco/smoking product retailer's permit is valid only for the location for which it has been issued and may not be transferred from one person to another or from one location to another.

(5) The duration of a tobacco/smoking product retailer permit shall be consistent with the provisions of PMC 5.04.230 and shall be renewed consistent with the provisions of PMC 5.04.250 except that any permit that is suspended, has been permanently revoked, or is subject to suspension or revocation proceedings shall not be renewed.

(6) A tobacco/smoking product retailer permit which is not timely renewed pursuant to PMC 5.04.250 is an expired permit. The tobacco/smoking product retailer shall not engage in tobacco/smoking product retailing at the permitted location until a new permit has been issued for that location.

(7) A denial by the Director of a tobacco/smoking product retailer's permit may be appealed pursuant to PMC 5.04.280, et. sequentes. An appeal shall stay all proceedings in furtherance of the appealed action.

(8) A valid City business license is required before a tobacco/smoking product retailer's permit may be issued.

(E) Positive Identification Required. No person engaged in tobacco/smoking product retailing shall sell or transfer a tobacco or smoking product or tobacco/smoking paraphernalia to another person who appears to be under the age of 27 years, without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco or smoking product or tobacco/smoking paraphernalia.

(F) Minimum Age to Sell Tobacco Products. No tobacco/smoking product retailer shall permit any person who is younger than 18 years of age to engage or participate in the sale of tobacco or smoking products or tobacco/smoking paraphernalia.

(G) Compliance Monitoring and Enforcement.

(1) Compliance with this section shall be monitored by any City official or employee authorized to enforce provisions of this chapter or this code. Compliance checks shall determine, at a minimum, if the tobacco/smoking product retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco/smoking product retailing. Nothing in this subsection shall create a right of action in any permit or other person against the City or its agents.

(2) Youth decoys may be utilized during enforcement of this chapter. The City shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of such person's age (herein "youth decoy") if the potential violation occurs when the youth decoy is participating in a compliance check supervised by any City official or employee authorized to enforce provisions of this chapter or this code.

(H) Permit Violations and Penalties.

(1) It shall be a violation of this section for a permittee, or his/her agents or employees, to violate any federal, state, or local law or regulation, including any provision of this chapter, applicable to tobacco or smoking products, tobacco/smoking paraphernalia or tobacco/smoking product retailing.

(2) Tobacco/smoking product retailing by means of a self-service display is prohibited.

(3) It shall be a violation of this section for a permittee or any permittee's agents or employees to violate any local, state or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code Section 11364.7.

(4) It shall be a violation of this section for any tobacco retailer or any of permittee's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette product.

(a) There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored electronic cigarette products, including but not limited to individual flavored electronic cigarette products, packages of flavored electronic cigarette products, or any combination thereof, possesses such flavored electronic cigarette products with intent to sell or offer for sale.

(5) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this section shall constitute a violation.

(6) Failure to prominently display the tobacco/smoking product retailer permit in a publicly visible location at the permitted premises shall constitute a violation.

(7) The failure of the permittee to allow any law enforcement service, the Director, or any authorized City official to conduct unscheduled inspections of the premises of the business for the purpose of ensuring compliance with any federal, state, or local tobacco law or regulation, including any provision of this chapter, at any time the business is open for business shall constitute a violation.

(8) Any continuing violation shall constitute a separate offense for each day of the violation.

(9) Violations of this chapter are hereby declared to be public nuisances.

(10) Violations of this chapter are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.

(11) In addition to other remedies provided by this chapter or by other law, any violation of this section may be remedied by a civil action brought by the City Attorney in the name of the City, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and suits for injunctive relief.
(I) Revocation of Permit.

(1) In addition to any other penalty authorized by law, a tobacco/smoking product retailer's permit may be revoked by the City Council in accordance with PMC 5.04.280 through 5.04.300.

(2) Upon a finding by the City Council of a first violation of any provision of this chapter within any five-year period the City shall:

(a) Issue a written warning to the permittee.

(b) Advise the permittee of the penalties for further violations of this section.

(c) Require the permittee to provide documentation to the City that all employees engaged in the retail sales of tobacco or smoking products and/or tobacco/smoking paraphernalia have received training in a City-approved program within 60 days after the warning, or such other time as shall be set by the Director of Planning.

(d) Revoke said tobacco/smoking product retailer's permit for 90 days.

(3) Upon a finding by the City of a second permit violation of any provision of this chapter, within any five-year period, the tobacco/smoking product retailer's permit may be revoked for up to one year.

(4) Upon finding by the City of a third permit violation of any provision of this section, within any five-year period, the tobacco/smoking product retailer's permit may be permanently revoked.

(5) A tobacco/smoking product retailer's permit may be revoked by the City Council if one of the following conditions exist:

(a) One or more of the grounds for denial listed in PMC 5.04.200 existed before the permit was issued; or

(b) A permittee is convicted of a misdemeanor or felony violation of any federal, state, or local tobacco law or regulation, including any provision of this section, or in a different legal proceeding has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in this section.

(6) A tobacco/smoking product retailer whose permit has been revoked may not apply for a new tobacco/smoking product retailer's permit until 30 days prior to the expiration of the revocation period.

(7) During any period of permit revocation, the tobacco/smoking product retailer must remove from public view all tobacco or smoking products, tobacco/smoking paraphernalia and tobacco-related advertising. Failure to do so may be considered a subsequent violation.

(8) A decision of the City Council to revoke a permit is final.

(J) Tobacco Retailing without a Permit.

(1) In addition to any other penalty authorized by law, if the Director finds that any person has engaged in tobacco/smoking product retailing at any location without a valid tobacco/smoking product retailer's permit, either directly or through the person's agent or employees, the person shall be ineligible to apply for or be issued a tobacco/smoking product retailer's permit for that location as follows:

(a) After the first violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until 120 days have passed from the date of the violation.

(b) After the second violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until six months have passed from the date of the violation.

(c) After the third violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until one year has passed from the date of the violation.

(2) The display of any advertisement relating to tobacco or smoking products or tobacco/smoking paraphernalia that promotes the sale or distribution of such products from the tobacco/smoking products retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location without first obtaining and maintaining a valid tobacco/smoking products retailer's permit pursuant to this section for each location at which the advertisement is displayed is prohibited.

(3) Tobacco or smoking products and tobacco/smoking paraphernalia offered for sale or exchange in violation of this section are subject to seizure by any City official or employee authorized to enforce provisions of this chapter or this code and shall be forfeited after the permittee and any other owner of the tobacco or smoking products or tobacco/smoking paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco or smoking products or tobacco/smoking paraphernalia were not offered for sale or exchange in violation of this section. The decision by law enforcement services may be appealed pursuant to the procedures set forth in PMC 5.04.280, et. sequentes. Forfeited tobacco or smoking products and tobacco/smoking paraphernalia shall be destroyed after the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired

without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(4) For the purposes of the civil remedies provided in this section, whichever of the following is greater shall constitute a separate violation of this section:

(a) Each day on which a tobacco or smoking product or tobacco/smoking paraphernalia is offered for sale in violation of this section; or

(b) Each individual retail tobacco or smoking product and each individual retail item of tobacco/smoking paraphernalia that is distributed, sold, or offered for sale in violation of this section.

~~**5.04.490 Game arcades.**~~

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Coin-operated game" means any game or machine, operated by the insertion of money, coin or other object, which is predominately a game of skill or amusement. Such games include, but are not limited to, coin-operated pool tables, pinball machines and video games.~~

~~(2) "Game arcade" means any place open to the public where five or more coin-operated games are kept or maintained for use and operation by the public.~~

~~(B) General Requirements.~~

~~(1) Manager Required. A game arcade permittee shall provide a manager, pursuant to PMC 5.04.050, to oversee the operation and orderly use of the games in the game arcade. Such manager shall be present in the game arcade during all hours that it remains open.~~

~~(2) Visibility of Interior.~~

~~(a) The permittee shall maintain the interior premises of the game arcade in a manner such that it is clearly visible from the entrance to the establishment in which the game arcade is located.~~

~~(b) Notwithstanding subsection (B)(2)(a) of this section, if the game arcade is located in a physically segregated portion of the premises, the permittee shall maintain its interior in~~

~~a manner such that it is clearly visible from the entrance into the game arcade. (Ord. 919 § 6, 1991; Ord. U-919 § 1, 1991; Ord. 898 § 2, 1990)~~

~~5.04.500 Gun dealers.~~

~~(A) Definitions. For purposes of this section, the following term shall have the following meaning:~~

~~"Gun dealer" means any person who sells or otherwise transfers to members of the public any pistol, revolver or other firearm, new or used, capable of being concealed upon the person.~~

~~(B) Application Information.~~
~~(1) Permit Form. Any permit issued to operate a gun dealer shall be on a form provided by the State Attorney General.~~

~~(2) Application Form. Notwithstanding any other provision of this chapter, every applicant for a gun dealer permit shall fill out the application form provided by the State Attorney General.~~

~~(C) Permit Subject to Conditions. All permits issued under this section are subject to the following conditions, breach of any of which subjects the business permit to forfeiture:~~

~~(1) The business activity shall be carried on only in the building designated in the permit.~~

~~(2) The permit or a copy thereof, certified by the issuing authority, shall be posted in a conspicuous manner on the premises in which the business is being conducted.~~

~~(3) No pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered:~~

~~(a) Within 10 days of the application for the purchase, or, after notice by the Department of Justice ("Department") pursuant to subdivision (c) of Section 12076 of the State Penal Code, within 10 days of the submission to the Department of corrected copies of the register, or within 10 days of the submission to the Department of any fee required pursuant to subdivision (d) of Section 12076 of the State Penal Code, whichever is later:~~

~~(i) Unless unloaded and securely wrapped or unloaded and in a locked container;~~

~~(ii) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity to the dealer;~~

~~(iii) Whenever the dealer is notified by the Department of Justice that a purchaser is in a prohibited class described in Section 12021 or 12021.1 of the Penal Code or Section 8100 or 8103 of the Welfare and Institutions Code.~~

~~(b) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.~~

~~(c) The permittee shall agree to and shall act properly and promptly in processing transfers of pistols, revolvers, and other firearms capable of being concealed upon the person.~~

~~(d) The permittee shall comply with Sections 12073 and 12077 and subdivision (b) of Section 12072 of the State Penal Code. (Ord. 1120 § 9, 1998; Ord. 898 § 2, 1990)~~

~~5.04.510 Health clubs.~~

~~(A) Definitions. For purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Health club" means:~~

~~(a) Any business which offers or provides to the public on a membership basis, services, facilities, instruction, training or assistance in body building, exercising, weight reduction, figure development, aerobics or any other similar physical activity;~~

~~(b) Any business which has therein steam rooms, saunas, shower stalls, swimming pools, soaking facilities such as spas, tubs or any other device in which a person can soak, such as a steam bath.~~

~~(2) "Health club contract" means a contract in the form and manner prescribed by California Civil Code Section 1812.80 et seq. between a health club and a consumer for health club services.~~

~~(3) "Health club closure" means the discontinuation or relocation of health club services in the manner, and at the location, specified in the health club contract. This shall not include temporary closures for a period of two weeks or less in order to make repairs or alterations to existing facilities.~~

~~(4) "Refund" means an amount equal to the pro-rated value of the remaining time on a health club contract at the time of a health club closure. Initiation and processing fees, if~~

~~any, shall be included if such fees were paid within two years of the date of the health club closure.~~

~~(B) Permit Exemptions. The provisions of this section do not apply to:~~

~~(1) Health clubs located within a private residence, condominium, townhouse or apartment complex;~~

~~(2) A place where primary treatment in the practice of any healing art or profession is administered pursuant to the provisions of the Business and Professions Code or any other statute of the state of California;~~

~~(3) A place of employment where bathing facilities for the use of employees are required by law; or~~

~~(4) Any business permitted under this chapter as a massage establishment.~~

~~(C) Operating Requirements.~~

~~(1) Term of Health Club Contract. No health club operating in the City shall contract to provide health club services for a period of time beyond which the health club has an ownership or leasehold interest to operate such health club.~~

~~(2) Effect of Closure.~~

~~(a) Any health club closure due to repairs or alterations, resulting in the closure of said health club for a period of two weeks or longer, shall result in an extension of the consumer's health club contract for the period of the health club closure, which extension shall be added to the remaining time period of the initial contract. The health club shall keep a record of all closures lasting for any period exceeding two weeks.~~

~~(b) Any health club closure attributable to repairs or alterations, resulting in the closure of said health club for a period of three months or longer, shall comply with one of the following, at the option of the consumer:~~

~~(i) The consumer shall be granted an extension of the consumer's contract for the period of health club closure, which extension shall be added to the remaining time period of the initial contract; or~~

~~(ii) The consumer shall be granted a refund of the amount remaining of the health club contract, pro-rated from the first day of the health club closure.~~

~~(c) A health club closure due to the relocation of the health club shall result in one of the following:~~

~~(i) If the club is relocated within a reasonable distance (a five-square-mile radius) of its current location, then the consumer shall be granted an extension of the health club contract for the period during which the club is closed for relocation; or~~

~~(ii) If the club is relocated to a location greater than a five-square-mile radius from the location specified in the consumer's contract, the consumer shall be given, at his or her option, a refund of the amount remaining on the health club contract, pro-rated from the first day of the health club closure, or an extension of the contract on the terms specified in subsection (C)(1) of this section.~~

~~(3) Disclosure Statement. All health club contracts entered into in the City shall be accompanied by a disclosure statement which shall read, in bold face:~~

~~NOTICE TO CONSUMERS: In the event of a health club closure, you may have additional protections afforded by local law beyond those provided to you under state law. For more information, contact the City of Palmdale, Director of Finance, 38300 North Sierra Highway, Palmdale, California, 93550.~~

~~(4) Compliance Period. All health clubs shall comply with the requirements of this section on or before December 31, 1990.~~

~~(5) Sign at Main Entrance. A recognizable and readable sign shall be posted at the main entrance of every health club within the City identifying the establishment. Such sign shall comply with all requirements of this code.~~

~~(6) Maintenance of Facilities. All persons permitted to operate a health club pursuant to this chapter shall ensure that:~~

~~(a) Hot and cold running water is provided at all times;~~

~~(b) Separate closed cabinets are provided for the storage of clean and soiled towels and these cabinets are plainly marked "Clean Towels" and "Soiled Towels";~~

~~(c) All equipment is maintained in a good state of repair and all walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities of the establishment are in good repair and maintained in a clean and sanitary condition;~~

~~(d) Clean and sanitary disposable towels are provided for each patron of the establishment. No common use of towels or linens shall be permitted;~~

~~(e) The facility is adequately ventilated and air-conditioned; and~~

~~(f) Separate changing and restroom facilities are provided for men and women.~~

~~(D) Bond Requirements.~~

~~(1) Bond Required. No permit shall be issued or renewed pursuant to this section unless the applicant files with the Director a bond, executed by an admitted surety insurer, which meets all of the following requirements:~~

~~(a) The bond filed upon issuance of the permit shall be in an amount equal to the greater of: (i) $10,000, or (ii) an amount equal to the applicant's estimate of the aggregate amount of prepaid initiation fees and prepaid annual and multi-annual membership fees to be received during the first year of business operations.~~

~~(b) The bond filed upon any renewal of the permit shall be in an amount equal to the greater of: (i) $10,000, or (ii) the aggregate amount received during the prior year as prepaid initiation fees and prepaid annual or multi-annual membership fees (less that amount of such fees actually applied to membership privileges), plus an amount equal to the renewal applicant's estimate of such prepaid fees to be received during the ensuing year of business operations.~~

~~(c) The bond shall be for the benefit of, and shall be enforceable by, any person who suffers a loss as a consequence of a health club closure or as a consequence of any wrongful act of the permittee acting in the course and scope of the permittee's business or by any official, agent or employee of the permittee acting in the course or scope of his or her employment or agency.~~

~~(d) The bond shall be maintained in full force and effect in the required amount as a condition of continuing to engage in business. Any permit issued under this section shall be automatically revoked whenever any such bond, for any reason, ceases to be effective.~~

~~(e) The bond shall contain an acknowledgement by the admitted surety insurer of its obligations, in the event of a health club closure, to administer and pay claims for refunds as provided for in subsection (E) of this section.~~

~~(2) Exemptions from Bond Requirements. A bond shall not be required for the issuance or renewal of a health club permit if the Director, after consultation with the City Attorney, determines that the applicant is eligible for an exemption based upon any one of the following criteria:~~

~~(a) The applicant is a nonprofit organization which has qualified for a tax exemption pursuant to the California Revenue and Taxation Code; or~~

~~(b) The applicant charges consumers on a monthly or quarterly fee basis (excluding installment plans) and does not charge as an initiation fee an amount greater than the amount of the monthly fee; or~~

~~(c) The applicant has continuously provided health club services during the three-year period immediately prior to the date of the permit application, the applicant has unsecured and unencumbered assets in excess of $1,000,000, and the applicant warrants to the City, in a form approved by the City Attorney, that any subsequent sale or transfer of the health club shall be conditioned upon the applicant either providing refunds to consumers or requiring the successor to honor in full the terms and conditions of the applicant's existing health club contracts. An applicant qualifying for an exemption pursuant to this subsection shall annually file, concurrent with its business permit renewal application, a statement certifying that the applicant continues to maintain unsecured and unencumbered assets in excess of $1,000,000; or~~

~~(d) The applicant provides evidence satisfactory to the Director that the sum of $75,000 has been deposited directly into a trust account in a federally insured bank or savings and loan association, that a trust has been created and will be maintained for the benefit of any person who suffers a loss as a consequence of any wrongful act of the permittee acting in the course and scope of the permittee's business or by any official, agent or employee of the permittee acting in the course or scope of his or her employment or agency, and that the trustee of such trust account is obligated, in the event of a health club closure, to administer and pay claims for refunds as provided for in subsection (E) of this section.~~

~~(E) Administration of Refunds Following a Health Club Closure.~~

~~(1) Processing and Disbursement of Refunds. If, within 30 days following a health club closure, the permittee fails to refund to its customers all prepaid sums for services not received, then the admitted surety insurer issuing the bond, or the trustee of the trust account, as applicable, shall have the following obligations:~~

~~(a) To establish a health club refund account consisting of the bond proceeds or the funds on deposit in the trust account, as applicable;~~

~~(b) To receive and review all claims by customers for refunds;~~

~~(c) To determine the validity of all claims for refunds and to disburse refunds to those entitled to receive them; provided, however, that if all claims for refunds cannot be paid in full, such claims shall be paid on a pro-rata basis, taking into consideration the period of time remaining on the claimant's contract with the health club;~~
~~(d) Unless otherwise authorized by the City, no claim for a refund shall be accepted for processing more than six months after a health club closure, and no claims shall be paid until the end of said six-month period.~~

~~(2) Limitations on Recovery. No person may recover from the bond proceeds or from the funds in the trust account, as applicable, a sum greater than that which such person paid to the permittee; provided, however, that this limitation shall not restrict a person from alternatively pursuing civil remedies available under state or federal law and recovering sums greater than those paid to the permittee from sources other than the bond proceeds or funds in the trust account, as applicable. (Ord. U-1030 § 18, 1993; Ord. 944 § 1, 1991; Ord. 919 § 7, 1991; Ord. U-919 § 1, 1991; Ord. 898 § 2, 1990)~~

~~5.04.520 House and street numbering.~~

~~(A) Definition. For purposes of this section the following term shall have the following meaning:~~

~~"House and street numbering" means painting, stencilling or otherwise marking upon any curb, street, roadway, highway, or sidewalk any house number or address.~~

~~(B) Application Information. In addition to the information required by PMC 5.04.140, an application for a house and street numbering permit shall contain the following information:~~

~~(1) The full name, residence address and telephone number of every person proposed to engage in house or street numbering;~~

~~(2) The streets and areas where such numbering is to take place and the hours during which it is to take place;~~

~~(3) A brief description of the equipment used or to be used for such numbering and the brand of paint used or to be used for such numbering;~~

~~(4) Photographic identification, as defined in PMC 1.04.100, of all persons proposed to engage in such numbering; and~~

~~(5) The rates to be charged for such numbering.~~

~~(C) Exemptions – Fees. A bona fide nonprofit organization customarily holding regular meetings in the City may be exempted from payment of the permit fee.~~

~~(D) Permit – Contents. Each permit for house and street numbering shall contain the following information:~~

~~(1) The name of the permittee;~~

~~(2) The name of the painter, if different from that of the permittee; and~~

~~(3) The rates to be charged for such work.~~

~~(E) Operating Requirements.~~

~~(1) Consent of Owner or Occupant. No person shall engage in house and street numbering without first obtaining the written consent of the owner or occupant of the subject premises.~~

~~(2) Hours. No person shall engage in house and street numbering in any area of the City zoned for residential use under this code, from 8:00 p.m. until 9:00 a.m. of the following day.~~

~~(3) Numbering. Any numbers or markings shall be painted on the curb immediately fronting the designated premises in black on a white and beaded background. Such numbers or markings shall be eight inches in height and one inch in width.~~

~~(4) Identification. Every person engaging in house or street numbering shall have in his or her possession, and exhibit to any occupant or owner of property for which he or she is painting such numbering, the permit required by this section.~~

~~(5) Quality Inspection. If the house or street numbering done is of poor quality or appearance, as determined by the Director, the permittee shall, upon notification and within a reasonable time, redo the numbering at no charge. (Ord. 1317 § 5, 2007; Ord. 898 § 2, 1990)~~

~~5.04.530 Hypnotist.~~

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Hypnosis" means a state that resembles normal sleep but which is in fact induced by a person with whom the subject remains in rapport and susceptible to suggestion.~~

~~(2) Hypnotist" means one who practices hypnosis.~~

~~(B) Exemption. This section shall not apply to licensed psychologists or physicians who practice hypnosis as part of their psychological or medical practice.~~

~~(C) Application Information. In addition to the information required by PMC 5.04.140, an application for a hypnotist's permit shall contain the following information:~~

~~(1) The applicant's record of convictions for any violations of law, except minor traffic violations;~~

~~(2) The applicant's employment history for the prior five years;~~

~~(3) The names, addresses and phone numbers of at least three references who have known the applicant for more than three years;~~

~~(4) The applicant's fingerprints;~~

~~Proof that the applicant is registered with a hypnotist's organization approved by the Office of Private Post Secondary Education of the California Department of Education, and that the applicant is a member of at least one statewide or nationwide organization of professional hypnotists.~~

~~(D) Operating Requirements.~~

~~(1) Insurance. Every permittee shall maintain a policy of liability insurance, pursuant to PMC 5.04.240, with liability coverage in the sum of $100,000.~~

~~(2) Qualifications. Every hypnotist permittee shall maintain the registration and membership set forth in subsection ©(5) of this section in full force and effect throughout the term of the permit. (Ord. 898 § 2, 1990)~~

~~5.04.540 Reserved.~~

~~5.04.550 Locksmith.~~

~~(A) Definition. For purposes of this section, the following term shall have the following meaning:~~

~~"Locksmith business" means the business, trade or occupation of making or fashioning keys for locks or similar devices, whether from a fixed location or otherwise; or constructing, reconstructing, or repairing or adjusting locks, or opening or closing locks for others by mechanical means other than the use of regular keys furnished for that purpose by the manufacturer of the locks. The definition of locksmith business does not include a person who only duplicates keys.~~

~~(B) General Requirements.~~

~~(1) Identifying Number Requirements. Each permit issued for a locksmith business shall contain an identifying number, which number the Sheriff shall assign. Each locksmith shall stamp such identifying number on every key made, repaired, sold or given away by him, except a key merely duplicated from another key.~~

~~(2) State License Required. No permit shall be issued for a locksmith business unless the applicant is duly licensed as a locksmith by the state of California. (Ord. 944 § 2, 1991; Ord. 898 § 2, 1990)~~

~~5.04.560 Massage establishments and massage technicians.~~

~~(A) Definitions. For purposes of this section, the following words and phrases have the following meanings:~~

~~(1) "Certificate" means a certificate issued by a recognized school of massage (as defined in this subsection (A)), certifying completion of the required curriculum in massage training.~~

~~(2) "Corporate massage" means any massage of the neck, arms, shoulders and back area above the waist where the client is fully clothed and in a sitting position, where the massage is: (i) administered by a licensed and permitted massage technician; (ii) approved as an accessory use in a permitted location; and (iii) where the massage is limited to the upper body and conducted without the use of supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice.~~

~~(3) "Massage" means any method of treating the external parts of the body for remedial, health, or hygienic purposes by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, other similar preparations commonly used in this practice, or any other system for treatment or manipulation of the human body with or without any form of bath, such as Turkish, Russian, Swedish, Japanese, Shiatsu, acupressure, vapor, shower, electric tub, sponge, mineral, fomentation or any other type of bath, including herbal body wraps.~~

~~(4) "Massage establishment" means any establishment having a fixed place of business where any person provides or attempts to provide, engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any business of providing massages, as defined in this subsection (A), or health treatments involving massage as the principal function, and where more than one massage table or chair will be utilized, or more than one licensed and permitted massage technician will be on duty at any one time.~~

~~(5) "Massage technician" includes "masseur," "masseuse," "massage practitioner" and "massage therapist," and means any person who administers to any other person, for any form of consideration or gratuity, a massage as defined in this section.~~

~~(6) Qualified massage association" means any association that meets all of the following criteria:~~

~~(a) The association is a nonprofit organization; and~~

~~(b) The association has established as minimum education requirements for membership the completion of a minimum of 500 hours of education and training or its equivalent, in anatomy, physiology, hygiene, sanitation, massage therapy and practice, ethics of massage practice, first aid and CPR, from a recognized school of massage and has a written and practical testing of equivalency administered and overseen by its admission committee or by a national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which is required in order to obtain membership; and~~

~~(c) The association offers and requires participation and completion by its members of a minimum number of hours of specified continuing education as a condition of continuing membership; and~~

~~(d) The association is open to members of the general public who meet the requirements for membership; and~~

~~(A) The association has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of those rules.~~

~~(1) "Recognized school of massage" means any school or institution of learning that teaches the theory, ethics, practice, profession, and work of massage, which school or institution complies with California Education Code Sections 94310 and 94311, or complies with equivalent regulations from other jurisdictions, and which requires a resident course of study before the student is furnished with a diploma or certificate of graduation. No school offering a correspondence course and not requiring actual attendance will be deemed to be a recognized school of massage. A school of massage may not provide massage services to any member of the general public for any form of compensation, gratuity or consideration.~~

~~(8) "Sheriff" means the Los Angeles County Sheriff or his or her designee.~~

~~(B) Exemptions. This section shall not apply to the following:~~

~~(1) The provisions of this section that require a massage technician permit are not applicable to, and may not be construed as applying to, any of the following persons:~~

~~(a) Physicians, surgeons, chiropractors, osteopaths, physical therapists or any registered or licensed vocational nurse working on the premises of and under the direct supervision of a physician, surgeon, chiropractor, osteopath, or physical therapist duly licensed to practice that profession in the state of California. Practical nurses, or other persons not having a massage technician permit whether or not employed by the physician, surgeon, chiropractor, osteopath, or physical therapist, may not administer or practice massage;~~

~~(b) State-licensed acupuncturists;~~

~~(c) Registered nurses and licensed vocational nurses;~~

~~(d) Coaches or trainers of amateur, semiprofessional, or professional athletes;~~

~~(e) Barbers and beauticians, duly licensed under the laws of the state of California, while engaging in their professions; provided, however, that this exception applies solely to the massaging of the neck, scalp and hair of the customer or client;~~

~~(f) State-certified massage technicians pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code who are practicing massage consistent with the requirements therein.~~

~~(1) The provisions of this section that require a massage establishment permit are not applicable to, and may not be construed as applying to, any of the following:~~

~~(a) Hospitals, nursing homes, sanitariums, or other health care facilities licensed by the state of California;~~

~~(b) Hospices, including those located in residences, that are licensed by the County of Los Angeles;~~

~~(c) The athletic departments of accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment;~~

~~(d) Health fairs or similar special events that are reviewed and approved by the Director;~~

~~(e) A health club, fitness center, gymnasium, hotel with over 100 rooms, a suntan parlor, a barber or beauty shop where massage is provided as an approved accessory use to the primary business;~~

~~(f) Physician's, surgeon's, chiropractor's, osteopath's, or physical therapist's medical practice as an approved accessory to the primary business;~~

~~(g) Massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code, and to massage establishments or businesses that employ or use only persons certified to provide massage services pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code who are practicing massage consistent with the requirements therein.~~

~~(C) Permit Application – Massage Establishments. It is unlawful for any person, to engage in, conduct, or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises within the City, the operation of a massage establishment as defined in this section without first having obtained a permit issued by the City pursuant to the provisions of this section. A permit is valid as provided for in PMC 5.04.230, unless earlier revoked or suspended. The required permit is in addition to any business license required by this code. The application for a permit does not authorize operation of a massage establishment unless and until the permit has been issued. In addition to the information required by PMC 5.04.140, all applications for a permit to conduct a massage establishment business must contain the following information, as applicable:~~

~~(1) The nature of the ownership of the business, i.e., whether by an individual, partnership, corporation, or otherwise. If the applicant is a corporation, the name of the corporation~~

~~must be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses and telephone numbers, and business addresses and telephone numbers, of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of that corporation. If the applicant is a partnership, the application must set forth the name, residence and business addresses, and telephone numbers, of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the Secretary of the State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations is applicable. The applicant corporation or partnership must designate one of its officers or general partners to act as its responsible managing officer. That designated person must complete and sign all application forms required for an individual applicant under this subsection, but only one application fee will be charged;~~

~~(2) The precise name or names under which the business of the massage establishment is to be conducted;~~

~~(3) The business address and all telephone numbers of the massage establishment;~~

~~(4) A list of the names, residence addresses, and telephone numbers of all proposed massage technicians and employees to be employed by the massage establishment, and the name, residence address, and telephone number of the manager or managing employee proposed to be principally in charge of the operation of the massage establishment;~~

~~(5) A description of any other business operated on the same premises, or within the City or the state of California, that is owned or operated by the applicant;~~

~~(6) The present address, telephone number, and the previous addresses, if any, of the applicant for the last 10 years immediately preceding the date of the permit application and the dates of each address;~~

~~(7) Written proof of the applicant's or responsible managing officer's age, height, weight, color of hair and eyes, sex, and date of birth;~~

~~(8) Two identification photographs at least two inches by two inches taken in the last six months and fingerprints of the applicant or the responsible managing officer;~~

~~(9) The employment history and experience of the applicant in the massage or similar business for the last 10 years immediately preceding the date of application including, but~~

~~not limited to, the massage or similar business history and experience in this City or any other city or state;~~

~~(10) Whether the applicant has had any other permit or license issued by an agency, board, city, county, territory, or state; the date of issuance of that permit or license, and whether the permit or license was denied, revoked or suspended; or, if a vocational or professional license or permit was denied, revoked or suspended, the reason therefor;~~

~~(11) All criminal convictions, including ordinance violations and pleas of nolo contendere, within the last 10 years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding traffic violations, and a statement as to the date and place of each such conviction and reasons therefor;~~

~~(12) The name and address of the owner or lessor of the real property upon which the business is to be conducted. If the applicant is not the owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on that property;~~

~~(13) Proof of matriculation from a "recognized school of massage," as defined in subsection (A) of this section. If the applicant is a corporation or partnership, then this proof must be supplied for the member of the corporation or partnership who will actively participate in the management of the massage establishment, and who is designated as the responsible managing officer;~~

~~(14) Proof of membership in a "qualified massage association," as defined in subsection (A) of this section;~~

~~(15) A floor plan of the massage establishment indicating all proposed tenant improvements, including the location of each room, massage table and/or chair dedicated to providing massage services. No alterations to the approved floor plan will be permitted unless and until reviewed and approved by the appropriate City departments;~~

~~(16) Authorization for the City, its agents and employees, to seek verification of all information contained in the application;~~

~~(17) Such other information as may be deemed necessary by the Director or the Sheriff's Department;~~

~~(18) A statement in writing, signed and dated by the applicant, declaring under penalty of perjury that all information contained in the application is true and correct and that all provisions of this section will be adhered to.~~

~~(D) Massage Establishment — Permit Issuance and Denial. Upon receipt of a written application, the Director will have 60 days to conduct an investigation to ascertain whether the permit should be issued. The Director must forward a recommendation to the City Council, which has the authority to issue the permit unless it makes any of the following findings:~~

~~(1) The applicant, if an individual, or any officers, directors, or shareholders of the corporation, if the applicant is a corporation, or any of the partners including limited partners, if the applicant is a partnership, or any person proposed to be engaged or employed in the massage establishment, has within 10 years preceding the date of the application:~~

~~(a) Been convicted of a violation of California Penal Code Section 266(h), 266(i), 314, 315, 316, 318, or subsection (a) or (b) of Penal Code Section 647, or any other provisions of law that require a person to register under the provisions of Penal Code Section 290, or where the prosecution accepted a plea of guilty or nolo contendere to a charge of violating Penal Code Section 415, or any lesser included offense, in satisfaction of or as a substitute for any of the previously listed crimes;~~

~~(b) Been convicted of a violation of Health and Safety Code Section 11550, or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058;~~

~~(c) Been convicted of an offense in any other state, which offense is the equivalent of any of the above referenced offenses;~~

~~(d) Engaged in conduct that would constitute grounds for suspension or revocation under this section;~~

~~(e) Been subjected to a permanent injunction against the conduct or maintenance of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or similar provisions of law of a jurisdiction outside the state of California; and~~

~~(f) Been convicted of an act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are related to the qualifications, functions or duties of the applicant;~~

~~(2) The applicant had a massage operator or massage technician permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county, or state within 10 years prior to the date of application;~~

~~(3) The applicant has made false, misleading, or fraudulent statement(s) or omission(s) of fact to the City in the permit application process;~~

~~(4) The application does not contain all of the information required by subsection © of this section;~~

~~(5) The massage establishment, as proposed by the applicant, would not comply with all applicable laws, including but not limited to health, zoning, fire, and safety requirements and standards;~~

~~(6) The applicant has not satisfied the requirements of this section within the time specified.~~

~~If the application is denied for failure to comply with subsection (D)(3) or (4) of this section, the applicant may not reapply for a period of 12 months from the date the application was denied.~~

~~(E) Massage Establishment – General Provisions. All permittees must comply with the following conditions and any other conditions specified by the City Council in connection with the issuance of a permit:~~

~~(1) Prior to occupancy of the massage establishment, a final inspection by the appropriate City departments and agencies will be conducted to verify compliance with the approved plans and with all applicable provisions of this section. On-going operation of the massage establishment must be in conformance with this code and the zoning ordinance at all times.~~

~~(2) No massage technician, employee, or manager may massage the genital or anal area of any patron, or the breasts of any female patron, nor may any permittee or manager of a massage establishment allow such massage. No massage technician, operator, or manager, while performing any task or service associated with the business of the massage establishment, may be present in any room with another person unless that person's genitals, anus, or, in the case of a female, her breasts, are completely covered by a fully opaque, nontransparent material.~~

~~(3) No permittee may conduct business under any name not specified in the permit.~~

~~(4) All massage establishments must have a manager on the premises at all times that the massage establishment is open. The permittee of the massage establishment must file a statement with the Director designating the person or persons who are authorized to act as the manager and to ensure compliance with this section, as well as being the person to whom notices required by this chapter may be delivered to for receipt by the permittee.~~

~~(5) No massage establishment may be or remain open for business without having at least one massage technician on duty on the premises who holds a current valid permit.~~

~~(6) The permittee and its designated manager(s) must ensure that the permit for each on-duty massage technician is conspicuously displayed in a location visible to the patrons, and that each massage technician is wearing the photo identification required by subsection (J)(2) of this section.~~

~~(7) No permittee may employ any person as a massage technician who does not have a valid massage technician permit issued pursuant to this section. Every permittee must report to the Director any change of employees, whether by way of new or renewed employment, discharge or termination. The report must set forth the name of the employee and the date of hire or termination. The report must be made within five days of the hire or termination. The permittee must deliver to the Director the permit and photo identification card of any massage technician no longer employed by the permittee.~~

~~(8) All persons employed in the massage establishment must be fully clothed at all times. Clothing must be of a fully opaque, nontransparent material and provide complete covering from mid-thigh to three inches below the collar bone.~~

~~(9) Each permittee must conspicuously display the current massage establishment permit in a location within the massage establishment that is visible to patrons.~~

~~(10) The permittee must comply with all provisions of this section and all applicable provisions of this code.~~

~~(F) Massage Establishment – Facility and Operating Requirements.~~

~~(1) Facilities.~~

~~(a) Structure. Massage must be conducted in a structure that is located in a zone district where that use is authorized.~~

~~(a) Services List. Each permittee must post and maintain in a conspicuous location within the premises, a list, in English, of services available and the cost of those services. No permittee, or responsible managing officer, may permit, and no massage technician may offer or perform, any services other than those posted.~~

~~(b) Lighting. Each permittee must provide in each room where massage is conducted sufficient lighting and ventilation that complies with the Uniform Building Code. The lighting in each massage room must be provided by at least one 60-watt white light bulb and must be activated at all times while a patron is in that room or enclosure. No strobe flashing lights may be used. No colored lights may be used nor may any coverings be used which change the color of the primary light source.~~

~~(c) Bath Facilities. A minimum of one toilet and one separate wash basin must be provided for patrons in each massage establishment. The basin must provide soap or detergent and hot running water at all times and must be located within close proximity to the area devoted to the conduct of massage services. A permanently installed soap dispenser, filled with soap, and a single-service towel dispenser must be provided at the restroom hand wash sink. In addition, a separate wash basin must be provided for the use of employees. No bar soap may be used. A trash receptacle must be provided in each toilet room. Showers may be provided at the permittee's option.~~

~~(d) Storage. Closed cabinets must be provided and used for storage of clean linens, and approved receptacles must be provided for the deposit of soiled linen. All cabinets and receptacles must be clearly labeled.~~

~~(e) Separate Rooms. If male and female patrons are to be treated simultaneously at the same massage establishment, then separate massage rooms must be provided for male and female patrons.~~

~~(f) Maintenance. All facilities of the massage establishment must be in good repair and must be thoroughly cleaned and sanitized each day that the business is in operation. The surfaces of all walls, floors, and ceilings of each restroom and shower area, if provided, must be made smooth so as to be easily cleaned. No carpeting may be installed in any of these areas.~~

~~(g) Massage Table. A massage table must be provided in each massage room dedicated for massage services and the massage must be performed on the massage table.~~

~~The tables must be a minimum height of 18 inches. Two-inch-thick foam pads, with a maximum width of four feet, may be used on a massage table and must be covered with~~

~~durable, washable plastic or other waterproof material. Beds, floor mattresses, and waterbeds may not be used in the administration of a massage.~~

~~(1) Operating Requirements.~~

~~(a) Same Use. No massage establishment may operate as a school of massage, or use the same facilities that are used by a school of massage.~~

~~(b) Equipment. Each permittee must provide and maintain adequate equipment for disinfecting and sterilizing any instruments used in massage. Instruments used in performing massage may not be used on more than one patron unless they have been sterilized using approved sterilizing methods.~~

~~(c) Inspections. The permittee must consent to the inspection of the massage establishment by the City's Division of Building and Safety, Code Enforcement Department, Fire Department, Sheriff's Department, and the County Health Department for the purpose of determining that the provisions of this section, and all other applicable laws or regulations, are met. Routine inspections may not exceed more than two each year, unless violations are found or complaints are received. During the inspection, verification of the identity of all on-duty massage technicians may occur. Inspections of the massage establishment may be conducted at any time the business is in operation or at any other time that employees are on the premises.~~

~~(d) Linen. Common use of towels or linen may not be permitted. Towels and linen must be laundered or changed promptly after each use. Separate enclosed cabinets with doors or covers must be provided for the storage of clean and soiled linen and must be plainly marked "Clean Linen" and "Soiled Linen."~~

~~(e) Living Quarters Prohibited. No person may be permitted to reside within any massage establishment at any time. No kitchen facilities may be provided within any massage establishment, and no food of any kind may be prepared for sale or sold in the massage establishment. The sale of prepackaged herbs and lotions is permitted; provided, that no more than 10 percent of the floor area is dedicated for that use.~~

~~(f) Alcoholic Beverages/Drugs. No person may enter, or remain in, any part of a massage establishment while in possession of, consuming, using, or under the influence of, any alcoholic beverage or controlled substance. The permittee and manager are responsible to ensure that no such person enters or remains upon the premises of the massage establishment. Service or possession of alcoholic beverages by the establishment or any other person on the premises of the establishment, including the area beyond the reception area, is prohibited.~~

~~(g) Recordings. No electrical, mechanical, or other device may be used by the permittee or any employee of a massage establishment for audio or video recording, or for monitoring the conduct of a massage or any conversation or other sounds in the massage rooms.~~

~~(h) Employee Records. The permittee or manager of the massage establishment must keep a complete and current list of the names and residence addresses of all massage technicians and employees of the massage establishment, and the name and residence addresses of the manager or managing employee who is designated to be primarily in charge of the operation of the massage establishment. This roster must be kept on the premises for immediate inspection by officials charged with enforcement of this section.~~

~~(i) Coverings. Each massage establishment must provide to all patrons clean, sanitary, and opaque nontransparent coverings capable of covering the patron's specified anatomical areas, including the genital area, anus and female breasts. No common use of these coverings is permitted, and reuse of these coverings is prohibited unless properly cleaned.~~

~~(j) Client Records. Every massage establishment must require all patrons to print and sign a register book in a legible manner. Records must be kept of the dates and hours of each massage treatment or service, the name and address of the patron, the name of the massage technician administering that service, and a description of the massage treatment or service rendered. A short medical history form must be completed by the permittee to determine whether the patron has any physical condition which may be adversely affected by the massage. These records must be prepared prior to administering any massage or treatment and must be retained on the premises for a period of 24 months after the treatment or service. These records must be open to immediate inspection only by officials charged with enforcement of this section and for no other purpose. Any unauthorized disclosure or use of that information by any officer or employee of the City constitutes a misdemeanor.~~

~~(k) Hours of Operation. No person may operate a massage establishment or administer a massage in any massage establishment, or as an accessory use, between the hours of 10:00 p.m. and 7:00 a.m. A massage that is commenced anytime before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons, and visitors must be excluded from the massage establishment or the massage area between 10:00 p.m. and 7:00 a.m.~~

~~(l) Advertising. No massage establishment or other business that is issued a permit under this section may place, publish, distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably~~

~~suggest to prospective clients or customers that any service is available other than those services described in this section, nor may any massage establishment employ language in the text of that advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this section.~~

~~(m) Persons with Disabilities. All massage establishments must comply with all state and federal laws and regulations relating to persons with disabilities.~~

~~(n) Doors. All front, reception, hallway, or front exterior doors (except back or rear exterior doors used for employee entrance to and exit from the massage establishment) must remain unlocked during business hours. No massage may be given within any cubicle, room, booth, or any other area within a massage establishment that is fitted with a door capable of being locked, unless the only door is an exterior door.~~

~~(o) Tinted or "One-Way" Glass. No massage establishment may be equipped with tinted or "one-way" glass in any room, office or store front window.~~

~~(3) Exception. The provisions of this subsection, facility and operating requirements for a massage establishment, are not applicable to and may not be construed as applying to massage establishments or businesses that are sole proprietorships or to massage establishments or businesses that employ or use only persons certified to provide massage services pursuant to Division 2, Chapter 10.5, Section 4600 et seq. of the Business and Professions Code and who are practicing massage consistent with the requirements therein.~~

~~(G) Change of Management or Ownership.~~

~~(1) Every permittee of a massage establishment must immediately report to the Director any change of ownership or management of the massage establishment, including, but not limited to, the change of manager or other person primarily in charge, a change in the mailing address of the owner, permittee, manager or other person primarily in charge, a change in stockholders holding more than five percent of the stock of the corporation, changes in officers, directors or partners, changes in the mailing address of the officers, directors or partners, any change of name, style, or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage establishment. A change in the location of any premises will require a new application for a massage establishment.~~

~~(2) No massage establishment permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment, will be deemed to constitute a~~

~~voluntary surrender of that permit, and that permit will thereafter be null and void; provided, however, that if the permittee is a partnership, and one or more of the partners dies, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of the permit, and, in such case, upon notification to the Director, the permit will be placed in the name of the surviving partners. A massage establishment permit issued to a corporation will be terminated when either: (i) any outstanding stock of the corporation is sold, transferred, or assigned after the issuance of a permit; or (ii) any stock authorized but not issued at the time of the granting of the permit is thereafter issued, sold, transferred, or assigned. No massage technician permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons.~~

~~(H) Permit Application – Massage Technicians. No person may perform or administer a massage, or advertise to provide massage services in the City, without first obtaining a permit issued by the City pursuant to the provisions set forth below. A permit is valid as provided for in PMC 5.04.230, unless earlier revoked or suspended. The required permit is in addition to any business license required by this code. In addition to the information required by PMC 5.04.140, an application for a massage technician permit must include the following information, as applicable:~~

~~(1) The primary business location at which the applicant will be working as a massage technician, including the full name of the business, street address, and all telephone numbers associated with that business location. If the massage technician will be providing massage at more than one location, the primary business location must be identified as well as all other locations, including the names, addresses, and telephone numbers of those other locations;~~

~~(2) The full true name and any other name used by the applicant;~~

~~(3) The present address and telephone number, and all previous addresses of the applicant for the last 10 years immediately prior to the date of application;~~

~~(4) Written proof of the applicant's age, height, weight, sex, color of eyes and hair, and date of birth;~~

~~(5) Two identification photographs at least two inches by two inches taken in the last six months, and the applicant's fingerprints;~~

~~(6) The employment history or experience of the applicant in the massage or similar business for the last 10 years immediately preceding the date of application, including,~~

~~but not limited to, the massage or similar business history and experience in this City or any other city or state;~~

~~(7) Whether the applicant has had any other permit or license as a massage technician issued by an agency, board, city, county, territory, or state; the date of issuance of that permit or license, and whether the permit or license was denied, revoked or suspended, and the reason therefor. That information must include the business activity or occupation engaged in by the applicant subsequent to any suspension or revocation;~~

~~(8) All criminal convictions, including ordinance violations and pleas of nolo contendere, within the last 10 years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding for traffic violations, and a statement as to the date and place of each such conviction and reasons therefor;~~

~~(9) Documentation of the applicant's experience as a practicing massage technician, as applicable;~~

~~(10) Proof of matriculation from a "recognized school of massage," as defined in subsection (A) of this section;~~

~~(11) Proof of membership in a "qualified massage association," as defined in subsection (A) of this section;~~

~~(12) Authorization for the City, its agents and employees, to seek verification of all information contained in the application;~~

~~(13) Such other information as may be deemed necessary by the Director or the Sheriff's Department;~~

~~(14) A statement in writing, signed and dated by the applicant, declaring under penalty of perjury that all information contained in the application is true and correct and that all provisions of this section will be adhered to.~~

~~(I) Massage Technician — Permit Issuance and Denial. Upon receipt of a written application, the Director will have 60 days to conduct an investigation to ascertain whether the permit should be issued. The Director must forward a recommendation to the City Council, which has the authority to issue the permit unless it makes any of the following findings:~~

~~(1) The applicant has, within 10 years preceding the date of the application, been convicted of any of the following:~~

~~(a) A violation of California Penal Code Section 266(h), 266(i), 314, 315, 316, 318, or subsection (a) or (b) of Penal Code Section 647, or any other provisions of law that require a person to register under the provisions of Penal Code Section 290, or where the prosecution accepted a plea of guilty or nolo contendere to a charge violating Penal Code Section 415, or any lesser included offense, in satisfaction of or as a substitute for any of the previously listed crimes,~~

~~(b) A violation of Health and Safety Code Section 11550, or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058,~~

~~(c) Conviction for an offense in any other state, which offense is the equivalent of any of the above referenced offenses;~~

~~(2) The applicant has been convicted of an act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are related to the qualifications, functions or duties of a massage technician;~~

~~(3) The applicant has had a massage operator or massage technician permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county, or state within 10 years prior to the date of application;~~

~~(4) The applicant has made false, misleading or fraudulent statement(s) or omission(s) of fact to the City in the permit application process;~~

~~(5) The application does not contain all of the information required by subsection (H) of this section;~~

~~(6) The applicant has not satisfied the requirements of this section within the time specified.~~

~~If the application is denied for failure to comply with subsection (I)(4) or (5) of this section, the applicant may not reapply for a period of 12 months from the date the application was denied.~~

~~(J) Massage Technicians – General Provisions. All massage technicians must comply with the following conditions and any other conditions specified by the City Council in connection with the issuance of a permit:~~

~~(1) No massage technician may massage the genital or anal area of any patron, or the breasts of any female patron. No massage technician, while performing any task or~~

~~service associated with the massage business, may be present in any room with another person unless that person's genitals, anus, or, in the case of a female, her breasts, are completely covered by a fully opaque nontransparent material.~~

~~(2) The massage technician must wear a photo identification card issued by the City at all times when acting as a massage technician in the massage establishment or other approved place of business. The identification card must be worn on the outer clothing with the photo side facing out. If a massage technician changes his or her business address, he or she must, prior to that change, obtain from the Director a new photo identification card and advise the Director in writing of the new business address.~~

~~(3) Massage technicians may not perform any massage at any location other than the location specified in the permit.~~

~~(4) While on duty, the massage technician may not use any name other than that specified on the photo identification card.~~

~~(5) Massage technicians must be fully clothed at all times. Clothing must be of a fully opaque, nontransparent material and provide complete covering from mid-thigh to three inches below the collar bone.~~

~~(6) The massage technician shall consent to the inspection of the massage establishment and occupied massage rooms by the City's Division of Building and Safety and Code Enforcement Department, Fire Department, Sheriff's Department and the Health Department for the purpose of determining that the provisions of this article and other applicable laws or regulations are met.~~

~~(7) The massage technician must consent to the inspection of the occupied massage room or areas by the City's Division of Building and Safety, Code Enforcement Department, Fire Department, Sheriff's Department, and the Health Department for the purposes of determining that the provisions of this section and other applicable laws or regulations are met.~~

~~(8) No massage technician permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons.~~

~~(9) The massage technician must comply with all provisions of this section and any applicable provisions of this code.~~

~~(K) Corporate Massage Businesses.~~

~~(1) Any person desiring to perform corporate massage, as defined in subsection (A) of this section, must first be conducting business at a fixed location that has a massage establishment permit or that is authorized to provide massage as an accessory use.~~

~~(2) Corporate massage may be performed only by a person who possesses a valid massage technician permit issued by the City.~~

~~(3) The massage technician or massage establishment offering corporate massage must have a signed contract for service at each location where the service is to be provided, and copies of all contracts must be provided to the City for review upon submittal of the business permit application. The contract must specify the location, days and times the service is to be offered.~~

~~(4) Corporate massage must be conducted at a commercial or industrial place of business and must be administered only to the employees of that business.~~

~~(5) Corporate massage must be provided only in a public area, to which all employees are provided free access.~~

~~(6) Corporate massage must be offered at a specified time and day at each location and may not be offered at any other time. In no event may corporate massage be permitted or offered between the hours of 9:00 p.m. and 7:00 a.m.~~

~~(L) Fees.~~

~~(1) The City Council will establish by resolution, and may from time to time amend, the fees for the administration of this section. Fees required by that resolution are in addition to any other fees required under other sections of this code.~~

~~(M) Existing Permits/Compliance.~~

~~(1) Commencing on the effective date of the ordinance amending this section, permits will be issued in accordance with the provisions of this section.~~

~~(2) All persons holding existing massage establishment permits or massage technician permits will have one year from the effective date of the ordinance amending this section to comply with all requirements of this section.~~

~~(N) Duration of Permits.~~

~~(1) Permits for massage establishments and massage technicians will be renewed to coincide with the duration of permits issued as provided for in PMC 5.04.230; provided, that the applicant continues to meet the requirements of this section.~~

~~(2) A renewal application for an existing permit must be filed with the Director before the expiration date of the existing permit. Temporary permits will not be issued, and renewal applications must be filed no later than 60 days prior to the expiration of the permit to prevent a lapse of the permit.~~

~~(3) Renewal applications will require such information as may be required by the Director to update the information contained in the original permit application and to conduct an investigation to ascertain whether a renewal should be issued. The Director must forward a recommendation to the City Council, which has the authority to renew a permit, as provided for in subsections (D) and (I) of this section. The appropriate filing fee must accompany the application for renewal.~~

~~(O) Suspension, Revocation and Nonrenewal.~~

~~(1) Revocation, Suspension and Nonrenewal of an Operator's Permit.~~

~~(a) The City Council may suspend a massage establishment permit for a period of 30 days for each violation of the provisions of subsection © (massage establishments – general provisions) or (F) (massage establishment – facility and operating requirements) of this section or on the grounds that the applicant or permittee has failed to comply with any of the permit conditions or other requirements of this section as determined by the Director and recommended to the City Council by the Director. If a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period.~~

~~(b) The City Council may revoke or refuse to renew a massage establishment permit under the following circumstances: (i) facts exist that would support findings for denial of a permit under any provision of subsection (D) of this section; or (ii) there is a subsequent violation of any provision of subsection © or (F) of this section within one year following suspension of the permit under subsection (O)(1)(a) of this section; or (iii) the permittee has demonstrated its inability to operate or manage the massage establishment in a lawful manner, thereby necessitating one or more responses by Law Enforcement Officers.~~

~~(c) The Director must notify the applicant, permittee, or manager in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant, permittee, or manager with a notice of intent to suspend, revoke~~

~~or refuse to renew a permit. This notice must state the reasons for the recommendation and date the City Council will consider the recommendation.~~

~~(2) Revocation, Suspension and Nonrenewal of a Massage Technician's Permit.~~

~~(a) The City Council may suspend a massage technician permit for a period of 30 days for each violation of the provisions of subsection (J) (massage technician – general provisions) of this section or on the grounds that the applicant or permittee has failed to comply with any of the permit conditions or other requirements of this section as determined by the Director and recommended to the City Council by the Director if a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period.~~

~~(b) The City Council may revoke or refuse to renew a massage technician permit under the following circumstances: (i) facts exist that would support findings for denial of a permit under any provision of subsection (I) of this section; or (ii) there is a subsequent violation of any provision of subsection (J) of this section within one year following suspension of the permit under subsection (O)(2)(a) of this section; or (iii) the permittee has demonstrated its inability to conduct massage services within a massage establishment in a lawful manner, thereby necessitating one or more responses by Law Enforcement Officers.~~

~~(c) The Director must notify the applicant or permittee in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant or permittee, with a notice of intent to suspend, revoke or refuse to renew a permit. This notice must state the reasons for the recommendation and date the City Council will consider the recommendation.~~

~~3. Notice.~~

~~(a) If the City Council determines that grounds exist for the suspension, revocation, or nonrenewal of a permit, the Director must serve the applicant, permittee, or manager in writing, delivered either by personal service or by certified mail, addressed to the business or residence address of the applicant, permittee or manager, with a notice of denial or notice of suspension, revocation or refusal to renew permit. This notice must state the reasons for the action and the effective date of the decision.~~

~~4. Violation and Penalty.~~

~~(a) Every person, who is subject to this section, and who violates any of the provisions of this section by administering a massage, or by operating a massage establishment, or~~

~~by advertising the availability of massage, without first obtaining a permit and a business license from the City to do so, or who violates any other provisions of this section is guilty of a misdemeanor.~~

~~(b) Any massage establishment that is operated, conducted, or maintained contrary to the provisions of this section may be declared to be unlawful and a public nuisance, and the City, in addition to or in lieu of prosecuting a criminal action, may commence an action or proceeding to abate that public nuisance in the manner provided by law, and to restrain and enjoin any person from operating, conducting, or maintaining a massage establishment contrary to the provisions of this code. (Ord. 1408 § 4, 2010; Ord. 1382 §§ 1, 2, 2009; Ord. 1090 § 10, 1997; Ord. 915 § 5, 1991; Ord. 898 § 2, 1990)~~

~~5.04.570 Motion picture theater.~~

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Motion picture theater" means a building, structure, or establishment at which motion pictures are played or exhibited and for which a fee is charged.~~

~~(2) "Adult motion picture theater" shall mean the same as the definition given in PMC 5.04.400(B)(1)(f).~~

~~(B) Operating Requirements.~~

~~(1) Remodeling or Enlargement of Theater. Any motion picture theater that has been closed for a continuous period of 30 days, and any theater that has been erected or structurally altered or enlarged, shall not be opened to the public without first having an inspection by, and the written permission of, the Division of Building and Safety and the Fire Department.~~

~~Upon application by the owner, agent or lessee, the Division of Building and Safety shall cause an inspection to be made of all the public safety devices of the theater building, and if they are found to comply with the requirements hereof, shall cause such written permission to be issued forthwith. In the event the public safety devices, appurtenances, exits, or stairways are not in a secure and safe condition, they shall be put into such condition before any motion picture is exhibited and before the building is opened to the public. The Division of Building and Safety shall have the right to close any theater building when any owner, lessee, manager, or agent refuses to comply with the provisions hereof, and such theater building shall remain closed until all such requirements applicable thereto shall have been complied with.~~

~~(2) Smoking in Motion Picture Theaters. Smoking shall not be permitted in the auditorium or balcony of any theater nor in any place where motion pictures are exhibited, except lounges, dressing rooms, or offices.x~~

~~(3) Fire Extinguishers Required. In addition to the fire extinguishing equipment required in all occupancies, as defined by the building codes of the City, there shall be installed not less than two class A fire extinguishers, as defined in the State Fire Marshal's Code, on each floor, including the basement. Adjacent to main switchboards, there shall be maintained not less than two class C fire extinguishers as defined in the State Fire Marshal's Code. In addition thereto, there shall be installed such number of fire axes and fire hooks as the Fire Department may order.~~

~~(4) Rewinding Film in Closed Cabinet. All rewinding of film shall be done in an enclosed cabinet of a type approved by the Fire Department. All film, records, and other combustible material used in connection with the projection of pictures shall be kept in metal lockers or cabinets, except when in actual use.~~

~~(5) Smoking or Open Flame in Booth Prohibited. No person shall smoke or maintain any open flame or other source of ignition within any motion picture machine booth. A sign bearing the words "No Smoking Permitted" shall be displayed in a conspicuous location within such motion picture machine booth.~~

~~(6) Automatically Operated Safety Devices – Testing. The Division of Building and Safety may require that all automatically operated safety devices be tested not less than once every 30 days to determine that they are in proper working condition.~~

~~(1) Projection Rooms and Booths.~~

~~(a) No unauthorized person shall be allowed inside any motion picture machine booth when it is being used for the projection of motion pictures.~~

~~(b) The requirements for projection rooms shall be those requirements which are enumerated in the latest edition of the Uniform Building Code as adopted and amended by the City.~~

~~(8) Hazardous Conditions. It is unlawful to admit or allow the admission of the public to a theater after receiving notice or obtaining knowledge of the existence of any hazardous condition within the theater which is injurious to the public health, safety, or welfare. Such hazardous conditions may include, but are not limited to, loose or improperly attached fixtures, unsanitary conditions, damaged or defective seats, defects in or damage to the floor, floor covering or carpeting, obstructions in aisles, and insufficient illumination or~~

~~inoperative light bulbs. (Ord. 1408 § 4, 2010; Ord. 1108 § 2©, 1997; Ord. 915 § 6, 1991; Ord. 898 § 2, 1990)~~

~~5.04.580 Pawnbrokers and secondhand dealers.~~

~~(A) Definitions. For purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Builders' tools" means all tools customarily used in the construction, alteration, or repair of buildings.~~

~~(2) "Coin dealer" means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial-grade ingots of gold, or silver, or other precious metals.~~

~~(3) "Pawnbroker" means any person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan.~~

~~(4) "Secondhand dealer" means and includes any person, copartnership, firm or corporation whose business includes buying, selling, trading, accepting for sale or consignment, accepting for auctioning or auctioning secondhand tangible personal property. A "secondhand dealer" does not include a coin dealer or participants at gun shows or events, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, who are not required to be licensed pursuant to Section 12071 of the Penal Code, who are acting in compliance with the requirements of Section 12070 and subdivision (d) of Section 12072 of the Penal Code, and who are not gun show traders, as described in paragraph (5) of subdivision (b) of Section 12070 of the Penal Code.~~

~~(5) "Tangible personal property" has the same meaning as set forth in Section 21627 of the Business and Professions Code of the state of California.~~

~~(B) Application Information. In addition to the information required by PMC 5.04.140, every applicant for a business permit to operate as a pawnbroker or a secondhand dealer shall provide the following information, as applicable:~~

~~(1) The applicant's age, height, weight, sex, and color of hair and eyes;~~

~~(2) The applicant's current address and prior addresses within the 12 months preceding the date of the application;~~

~~(3) Whether the applicant has ever conducted a similar business in the City or elsewhere and the name under which the applicant conducted such similar business;~~

~~(4) Fingerprints and photographic identification, as defined in PMC 1.04.100; and~~

~~(5) A copy of the applicant's current secondhand dealer or pawnbroker license issued by the state of California.~~

~~(6) Security Plan Required. The applicant shall submit a security plan. The plan should detail systems that the tenant intends on installing to protect patrons, visitors, employees, and company property/assets on site. The plan shall address issues such as safes to be installed, alarm systems, deployment of any security personnel, funds-transportation measures, hours of operation, shift personnel staffing, CCTV applications, type of loss-prevention/crime-prevention training provided to employees, and any other applicable measures.~~

~~(C) Operating Requirements.~~

~~(1) Hours of Operation. No pawnbroker or secondhand dealer, nor any employee thereof, shall accept any pledge, or loan any money for personal property, or purchase or receive any goods, wares or merchandise, or any article or thing, or in any manner whatsoever engage in or conduct business as a pawnbroker or secondhand dealer between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day.~~

~~(2) Reporting. Every permittee under this section shall comply with Section 21628 et seq. of the Business and Professions Code or Section 21208 et seq. of the Financial Code.~~

~~(a) Any business who buys or receives as a pledge any builders' tools, as defined by this section, shall comply with Sections 21550 et seq. of the Business and Professions Code.~~

~~(b) Disposal of Property. Every permittee under this section shall be subject to and shall comply with the requirements of state law for holding and inspection of property.~~

~~(c) No transactions that require reporting under Section 21628 of the Business and Professions Code shall be engaged in with any person under 18 years of age. (Ord. 1402 § 8, 2010; Ord. 1317 § 6, 2007; Ord. 944 § 3, 1991; Ord. 898 § 2, 1990)~~

~~5.04.590 Sidewalk vending.~~

~~(A) Definitions. As used in this section, the terms listed below shall have the following meaning assigned to them:~~

~~(1) "Cart" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.~~

~~(2) "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.~~

~~(3) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.~~

~~(4) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. Sidewalk vendors include roaming sidewalk vendors and stationary sidewalk vendors.~~

~~(5) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.~~

~~(6) "Swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.~~

~~(7) "Vend" or "vending" means operating as a sidewalk vendor.~~

~~(B) Applicability. The requirements of this chapter shall not apply to the following persons:~~

~~(1) Persons delivering goods, wares, merchandise, or food upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution.~~

~~(2) Persons selling goods, wares, merchandise, or food from a motorized vehicle, including food trucks and ice cream trucks.~~

~~(C) Business License and Special Business Permit Required.~~

~~(1) No person shall operate as a sidewalk vendor without first obtaining, and at all times maintaining, a valid City business license in accordance with PMC 5.04.050 and related sections of Chapter 5.04 PMC, and complying with all requirements of the business license, unless such person qualifies for an exemption under Chapter 5.04 PMC.~~

~~(2) No person shall operate as a sidewalk vendor without first obtaining, and all times maintaining, a special business permit in accordance with this section and complying with all requirements of the permit.~~

~~(3) The special business permit shall be valid for one year unless revoked or suspended prior to expiration. An application to renew a special business permit under this section shall be made not less than 30 days prior to the expiration of the current permit. A valid business license shall be applied for or renewed concurrently with the special business permit each year.~~

~~(4) A separate business license and special business permit shall be required for each cart.~~

~~(D) Requirements for Permit Application. An application for a special business permit for sidewalk vending shall include all of the following, to the extent applicable:~~

~~(1) The name, address, and telephone number of the applicant and each person who will operate the cart.~~

~~(2) A photo identification of the applicant and each person who will operate the cart.~~

~~(3) A description of the cart, including the dimensions of the cart, and a photograph of the cart.~~

~~(4) A complete list of the food or merchandise to be sold.~~

~~(5) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.~~

~~(6) The vendor's California seller's permit number (California Department of Tax and Fee Administration sales tax number).~~

~~(7) A City of Palmdale business license.~~

~~(8) A copy of any license or permit required from any other state or local agency that is required by law, including, but not limited to, a copy of any required permit from the county health department, if required.~~

~~(9) A certification by the applicant that to his or her knowledge and belief, the information contained in the application is true.~~

~~(E) Identification Numbers – Confidentiality. Notwithstanding any other requirement in this code, an applicant for a business license or special business permit to operate as a sidewalk vendor shall not be required to submit a social security number for the issuance of such license or permit. In lieu of an otherwise required social security number, the City shall accept a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number along with the permit application, which must be provided at the time of application. Identification numbers submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the license or permit program or to comply with a State law or State or Federal court order.~~

~~(F) Operational Standards.~~

~~(1) Each cart used by a sidewalk vendor must display a valid special business permit sticker at all times, which shall be issued by the City.~~

~~(2) All sidewalk vendors shall comply with the terms and conditions of the special business permit and shall not sell any food or merchandise that was not listed in the special business permit application.~~

~~(3) No stationary sidewalk vendor may operate in any residential zone; however, roaming sidewalk vendors shall not be prohibited from operating in such zones.~~

~~(4) In order to preserve the peace, safety, and tranquility of residential neighborhoods, no roaming sidewalk vendor may operate in any residential zone earlier than sunrise or later than sunset.~~

~~(5) In order to prevent obstructions of the public right-of-way, the total display area footprint of the cart, including the cart itself and any accompanying display, signage, or related items, shall not exceed a length of 72 inches, a width of 54 inches, or a height, including roof, awning, or canopy, of 78 inches.~~

~~(6) In order to prevent obstructions of the public right-of-way, no sidewalk vendor may set up or allow the use of an additional structure, including a table, crate, carton, or rack, to increase the selling or display capacity of the cart unless such items are explicitly allowed in the special business permit obtained by the sidewalk vendor.~~

~~(7) In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall provide a trash receptacle for customers and must ensure proper disposal of customer and vendor trash. The trash receptacle must be large enough to accommodate customer trash without resort to existing trash receptacles located on any block for use~~

~~by the general public. A sidewalk vendor may not dispose of customer trash in existing trash receptacles on sidewalks.~~

~~(8) In order to preserve sanitary conditions in all public rights-of-way, all sidewalk vendors shall maintain a clean and trash-free area, including a sanitized and neat appearing cart, within a 10-foot radius around the vendor's cart during hours of operation and shall ensure that such area is clean and trash-free before relocating or closing.~~

~~(9) In order to prevent damage to public property and prevent obstructions of the public right-of-way, no cart may be chained or fastened to any pole, sign, tree, or other object in the public right-of-way.~~

~~(10) In order to preserve the safety of the public, and prevent misuse of carts, no cart may be left unattended at any time.~~

~~(11) In order to preserve the safety of the public, to prevent misuse of carts, and to prevent obstructions of the public right-of-way, no cart may be stored, parked, or left overnight on any public street or right-of-way, or in any public park or other public property.~~

~~(12) In order to preserve the safety of vehicular travelers, no sidewalk vendor may solicit business from or conduct business with persons in motor vehicles.~~

~~(13) In order to preserve the safety of vehicular travelers and pedestrians, and to preserve public peace and welfare, no cart may be outfitted with any equipment, signage, or mechanism that endangers or detracts from the health, safety, or welfare of the public by causing an excessive distraction to motorists or interfering with nearby residences, business, or pedestrians including, but not limited to, sound amplification, flashing lights, smoke, steam, bubbles, gas-powered generators, or excessive fumes.~~

~~(14) In order to preserve the safety of vehicular travelers and pedestrians, any cart operated before sunrise or after sunset, or in location with insufficient lighting, shall be equipped with sufficient lighting or reflectors to alert pedestrians and vehicular travelers to the presence of the cart.~~

~~(15) In order to prevent obstructions of the public right-of-way, all signage related to the vending operation shall be affixed to the cart, or otherwise shall be in compliance with the zoning code.~~

~~(G) Location of Carts. In order to ensure access to public rights-of-way by pedestrians and emergency personnel, and avoid interference with vehicular traffic, certified farmers'~~

~~markets, swap meets, and City-permitted special events, sidewalk vendors shall not operate in the following areas of the public right-of-way:~~

~~(1) Any area other than a public sidewalk or pedestrian path.~~

~~(2) Within 15 feet of a fire hydrant, fire call box, or other emergency facility.~~

~~(3) Within 10 feet of an entrance to or emergency exit of any building or business during the hours that the building or business is open to the public.~~

~~(4) Within 15 feet of the outer edge of a driveway or driveway apron.~~

~~(5) Within 15 feet of a transit stop.~~

~~(6) Adjacent to any marked loading zone or bus zone.~~

~~(7) Within five feet of a curb return.~~

~~(8) Any location that would impede entering or exiting a parked vehicle.~~

~~(9) Any location that impedes the flow of pedestrian traffic by reducing the clear space to less than four feet or impedes access to or the use of abutting property, including, but not limited to, residences and places of business.~~

~~(10) Within 100 feet in any direction of the nearest vendor or concessionaire participating in a certified farmers' market or swap meet during the operating hours of the certified farmers' market or swap meet.~~

~~(11) Within 100 feet of a City-permitted special event including, but not limited to, parades, concerts, and movie filmings, unless vendor has received a permit to vend as part of the event. For moving events, vending shall be prohibited within 100 feet of any portion of the approved event route. For stationary events, vending shall be prohibited within 100 feet of the parcel boundary for the location of the event.~~

~~(12) Within 200 feet of any public or private school grounds between 7:00 a.m. and 4:00 p.m. on school days, and during any other time when in use and creating high vehicular traffic, such as uses for major sporting events.~~

~~(13) Upon or within any roadway, median strip, or dividing section.~~

~~(14) Any public sidewalk location when the straight path would not allow for 48 inches, or as the law updates, of clear width walking space of any sidewalk to be in compliance with Americans with Disabilities Act (ADA) regulations.~~

~~(15) Any public sidewalk where there is a 180 degree turn path for sidewalk ramps and corner curbs when the location would not allow for 42 inches approaching the turn, 48 inches at the turn, and 42 inches leaving the turn, or as the law updates, of clear width walking space of any sidewalk to be in compliance with ADA regulations.~~

~~(H) Special Requirements for the Sale of Food. All sidewalk vendors that prepare or sell food must be in compliance with all county and State permitting and licensing requirements for the preparation or sale of food.~~

~~(I) Penalties. For purposes of this section, "sidewalk vending program" refers to the provisions of subsections (F) through (H) of this section and PMC 8.24.210, inclusive, and the requirement to obtain a special business permit pursuant to PMC 5.04.590(C)(2).~~

~~(1) A violation of any provision in subsections (F) through (H) of this section and PMC 8.24.210, inclusive, may only be punished by the following:~~

~~(a) An administrative fine not exceeding $100.00 for a first violation.~~

~~(b) An administrative fine not exceeding $200.00 for a second violation within one year of the first violation.~~

~~(c) An administrative fine not exceeding $500.00 for each additional violation within one year of the first violation.~~

~~(d) Rescission of the sidewalk vendor's special business permit for the term of that permit upon the fourth violation or subsequent violations.~~

~~(2) Vending without a special business permit may be punished by the following:~~

~~(a) An administrative fine not exceeding $250.00 for a first violation.~~

~~(b) An administrative fine not exceeding $500.00 for a second violation within one year of the first violation.~~

~~(c) An administrative fine not exceeding $1,000 for each additional violation within one year of the first violation.~~

~~(3) Upon proof of a valid special business permit, an administrative fine imposed under subsection (I)(2) of this section shall be reduced to the respective administrative fine set forth in subsection (I)(1) of this section.~~

~~(4) No other fines, fees, assessments, or financial conditions shall be imposed for violation of the sidewalk vending program other than those imposed by subsections (I)(1) and (2) of this section.~~

~~(5) Notwithstanding any other provision of this code, neither a violation of the sidewalk vending program as codified in subsections (F) through (H) of this section and PMC 8.24.210, inclusive, nor a failure to pay an administrative fine, imposed by subsection (I)(1) or (2) of this section shall be punishable as an infraction or misdemeanor.~~

~~(6) Any person who receives an administrative fine under subsection (I)(1) or (2) of this section shall have the right to request an ability-to-pay determination.~~

~~(a) The City shall give any such person written notice of his or her right to request an ability-to-pay determination as well as instructions and other materials for requesting an ability-to-pay determination at the time that the administrative fine citation is issued.~~

~~(b) A right-to-pay determination may be requested at any time following the issuance of the administrative fine citation until the fine is paid, including when payment of the fine is delinquent or has been referred to a collection program.~~

~~(c) Upon receipt of a request for an ability-to-pay determination, the City manager or his or her designee shall determine whether such person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code. The determination of the City Manager or his or her designee shall be final.~~

~~(d) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the City shall reduce the fine to 20 percent of the amount of the fine originally imposed.~~

~~(7) The City Manager may, in his or her discretion, allow a person who receives an administrative fine under subsection (I)(1) or (2) of this section to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.~~

~~(8) Nothing in the chapter shall be construed to limit the City's ability to enforce, or remedies for enforcing, laws of general applicability or other provisions of this code against sidewalk vendors, or to take any other enforcement actions against sidewalk~~

~~vendors that are not prohibited by state or federal law, or which are allowed by this code. (Ord. 1606 § 2, 2023; Ord. 1516 § 3, 2018; Ord. 1317 § 7, 2007; Ord. U-1025 § 1, 1993; Ord. 944 § 4, 1991; Ord. 898 § 2, 1990)~~

~~5.04.600 Mobile vending.~~

~~(A) Purpose and Intent. It is the City's responsibility to promote the health, peace, safety, welfare and convenience of all persons in regards to their use and enjoyment of public lands. The City Council finds it necessary to regulate mobile vending for this purpose while ensuring that all such regulations comport with applicable law.~~

~~Reasonable regulations are necessary to ensure that mobile vending is operated in accordance with health, safety and traffic laws of the State and the parking ordinances of the City; do not cause public safety problems by contributing to traffic congestion or by creating pedestrian and vehicular conflicts; and do not disturb the quiet use and peaceful enjoyment of residential neighborhoods. The regulations in this section are enacted to ensure consistency with State law, including Section 22455 of the California Vehicle Code related to ice cream truck vending and California Health and Safety Code Section 114315 et seq. (the "California Retail Food Code") for food handling, as each may be amended.~~

~~(B) Definitions. As used in this section, the terms listed below shall have the following meaning assigned to them:~~

~~(1) "Food establishment" means any restaurant or grocery store with a permanent storefront location.~~

~~(2) "Goods or merchandise" means and includes items and tangible things and products of every kind and description, including any food, produce, and/or beverage items.~~

~~(3) "Human powered device" means any device moved by human power, including, but not limited to, any pushcart, wagon, bicycle, tricycle, or other wheeled device or conveyance.~~

~~(4) "Ice cream truck" means any motor vehicle requiring license from the California Department of Motor Vehicles which is used to vend at retail:~~

~~(a) Prepackaged frozen dairy or water-based food products; or~~

~~(b) Soft-serve or hand-dipped frozen dairy or water-based products; irrespective of whether or not the ice cream truck carries other prepackaged food products.~~

~~(5) "Mobile food truck" means a motorized vehicle or mobile food unit that should be licensed by the California Department of Motor Vehicles (whether licensed or not), designed and equipped to prepare, or serve, and sell food, and temporarily stored in a location where food items are sold to the general public.~~

~~(6) "Pedestrian solicitor" means a person vending goods or merchandise from their person without the use of a vehicle.~~

~~(7) "Person" means any natural person, firm, partnership, association, corporation, or other entity of any kind or nature.~~

~~(8) "Public property" means any real property, or interest therein, owned, leased, operated, or otherwise controlled by the City other than a street, alley, parkway, or sidewalk.~~

~~(9) "Vehicle" means a motorized vehicle or mobile food unit that should be licensed by the California Department of Motor Vehicles (whether licensed or not), designed and equipped to prepare, or serve, and sell food, and temporarily stored in a location where food items are sold to the general public as well as any trailer or other similar apparatus that can be attached to a motorized vehicle whether attached at the time of vending or not, and shall not include any human powered device and shall include an ice cream truck and mobile food truck.~~

~~(10) "Vehicle operator" means any person or entity owning a 10 percent or greater interest in, or operating or otherwise controlling, any business involving the vending of goods or merchandise from a vehicle.~~

~~(11) "Vend" or "vending" means the sale or offering for sale of any goods or merchandise to the public by a vehicle operator or pedestrian solicitor on a public street, private street open to the public, or other public property.~~

~~(12) "Vendor" means any pedestrian solicitor or any vehicle operator, and/or any employee, independent contractor, or other person acting on behalf of or for the benefit of a pedestrian solicitor or vehicle operator, who engages in the act of vending.~~

~~(C) Applicability. This section is intended to apply to all vending at any locations within the City. However, it does not apply in the following circumstances:~~

~~(1) Sidewalk vending described in PMC 5.04.590 if all legal requirements therein are met.~~

~~(2) Contractual or other private arrangement between a vendor and an individual or entity that wishes to have food catered to a specific location on private land and which is not open to the public, subject to the following: the vendor shall possess and at all times display in conspicuous view upon their vehicle, in connection with a vehicle operator, or upon their person, in connection with a pedestrian solicitor, a copy of the contractual document or other private arrangement detailing the terms of the agreement along with the name and contact information of the individual or entity that agreed to have food catered on private lands.~~

~~(3) Any person delivering any goods or merchandise by vehicle where such goods or merchandise have been ordered in advance for such delivery from any business located at a permanent location.~~

~~(4) Any person vending where such person has been authorized to engage in such activity by a permit, lease, real property license, agreement, or other entitlement issued by the City, State or Federal government for such purpose.~~

~~(5) Any person exempted from the provisions of this chapter by any local, State or Federal law, regulation or statute.~~

~~(D) Vehicle Operator and Pedestrian Solicitor Permits. Any person desiring to obtain a vehicle operator's permit to conduct or otherwise operate the business of vending goods or merchandise from a vehicle pursuant to this chapter shall file an application with the Business License Division of the Finance Department. Such application shall be accompanied by a nonrefundable application fee in such amount as established by resolution of the City Council. Any such permit shall be valid for one year from date of issuance. The permit may be renewed annually, subject to filing of a new application and payment of a new application fee.~~

~~(1) Vehicle Operator. Each permit applicant for a vehicle operator permit shall furnish the following information and documentation in the application:~~

~~(a) The street address where the office of the business is or will be located;~~

~~(b) The full, true name under which the business will be conducted;~~

~~(c) The full, true name and any other names used by the applicant along with a copy of a corresponding California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number. Identification numbers submitted under this section shall not be made available to the public for inspection, shall~~

~~be treated as confidential, and shall not be disclosed except as required to administer the permit program or to comply with a State law or State or Federal court order;~~

~~(d) The present residence and business addresses and telephone numbers of the applicant, each 10 percent or greater owner of the business, and all persons who will act as a vendor for the applicant, whether as an employee, contractor, or otherwise;~~

~~(e) A detailed description of the goods or merchandise which the applicant will vend;~~

~~(f) The make, body style, year, VIN number, State license plate number, names and addresses of each registered and legal owner of each vehicle and a copy of a valid vehicle registration for the subject vehicles;~~

~~(g) A description of the logo, color scheme, insignia, and any other distinguishing characteristics identifying applicant's business that will appear on each vehicle;~~

~~(h) The name, residential address, and telephone number of the applicant and individuals primarily responsible for managing the day-to-day operation of the vending business and/or performing any vending on behalf of the operator along with an email and cellular number for such individuals;~~

~~(i) Evidence of compliance with the insurance requirements of the Vehicle Code as to each vehicle; and~~

~~(j) The details of any known contractual or other private arrangement between a mobile food truck and an individual or entity that wishes to have food catered to a specific location on private land and which is open to the public. If this section is applicable, the permit application shall include the name and contact information of the individual or entity that wishes to have food catered on private lands as well as a copy of the contractual document or other private arrangement detailing the terms of the agreement.~~

~~(2) Pedestrian Solicitor. Each permit applicant for a pedestrian solicitor permit shall furnish the following information and documentation in the application:~~

~~(a) The street address where the office of the business is or will be located;~~

~~(b) The full, true name under which the business will be conducted;~~

~~(c) The full, true name and any other names used by the applicant along with a copy of a corresponding California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number. Identification numbers~~

~~submitted under this section shall not be made available to the public for inspection, shall be treated as confidential, and shall not be disclosed except as required to administer the permit program or to comply with a State law or State or Federal court order;~~

~~(d) The present residence and business addresses and telephone numbers of the applicant, each 10 percent or greater owner of the business, and all persons who will act as a vendor for the applicant, whether as an employee, contractor, or otherwise;~~

~~(e) A detailed description of the goods, merchandise, or services which the applicant will vend;~~

~~(f) The name, residential address, and telephone number of the applicant and individuals primarily responsible for managing the day-to-day operation of the vending business and/or performing any vending on behalf of the pedestrian solicitor along with an email and cellular number for such individuals; and~~

~~(g) The details of any known contractual or other private arrangement between a pedestrian solicitor and an individual or entity that wishes to have food catered to a specific location on private land and which is open to the public. If this section is applicable, the permit application shall include the name and contact information of the individual or entity that wishes to have food catered on private lands as well as a copy of the contractual document or other private arrangement detailing the terms of the agreement.~~

~~(3) The Business License Division shall be authorized to investigate the truth of the facts set forth in the application. Each application shall be approved or denied within a reasonable amount of time.~~

~~(4) Permit Denial. Any permit applied for under the provisions of this chapter may be denied for any of the following causes:~~

~~(a) One of the departments or officers performing a review of the permit renewal application has recommended denial of, or the imposition of additional conditions upon, such permit.~~

~~(b) If the City finds that the applicant knowingly made any false, misleading or fraudulent statements of material fact in the application for the permit.~~

~~(c) The applicant has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State or Federal law.~~

~~(d) Failure to comply with the requirements of this section or other provisions of the code by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.~~

~~(e) Fees, fines, or other penalties owing the City that are due and payable by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.~~

~~(5) Appeal Procedure. Written notice of denial, setting forth the grounds for denial, shall be served on the applicant. Any person aggrieved by a denial of a permit pursuant to this section may appeal such denial to the City Manager or designee pursuant to the procedures set forth in PMC 5.04.340. To seek an appeal, said person must submit a written request for an administrative hearing with a statement of why the denial did not merit any of the grounds for denial under subsection (D)(4) of this section to the City Clerk within 10 days after service of notice of the City Manager's or designee's decision. Upon receipt of a timely appeal, the aggrieved party shall be given notice of a hearing and a hearing shall be held pursuant to PMC 5.04.340 through 5.04.360.~~

~~(6) Each permittee shall notify the Business License Division, in writing, within 10 business days of any change in the required application information under subsections (D)(1) and (D)(2) of this section.~~

~~(E) Suspension and Revocation of Permit.~~

~~(1) Any vehicle operator's permit or pedestrian solicitor's permit may be temporarily suspended or revoked by the Business License Division for any of the following reasons:~~

~~(a) Provision of false information on the permit application.~~

~~(b) Failure of the permittee to notify the Business License Division within 10 business days of any change in the information supplied by the permittee upon which issuance of the permit was based, occurring subsequent to the issuance of the permit.~~

~~(c) There is substantial evidence of a violation by the permittee, any employee, subcontractor of the permittee, or any other person acting on the permittee's behalf, of this chapter or any other local, State, or Federal law constituting a misdemeanor or felony while in the course of conducting vending operations pursuant to the permit.~~

~~(d) While in the course of vending, driving of a vehicle by a vendor not possessing a valid driver's license, or operation of a vehicle found by police inspection to be unsafe and in violation of the Vehicle Code.~~

~~(e) The permittee no longer operates in accordance with the information and documentation supplied in connection with the vehicle operator permit application set forth in subsection (D)(1) of this section.~~

~~(f) The permittee no longer operates in accordance with the information and documentation supplied in connection with the pedestrian solicitor permit application set forth in subsection (D)(2) of this section.~~

~~(g) The permittee has been convicted of any violation of this code, any code adopted and incorporated by the City into this code, the California Penal Code, the Health and Safety Code, the Business and Professions Code, or any other State law.~~

~~(h) Fees, fines, or other penalties owing the City that are due and payable by the applicant and/or the vehicle operator or pedestrian solicitor in connection with any property, business, or other dealing with the City.~~

~~(2) Appeal Procedure. Written notice of suspension or revocation, setting forth the grounds for suspension or revocation, shall be served on the offending permittee. The notice shall advise the permittee of the right to file a written appeal. Any person aggrieved by a suspension or revocation of a permit pursuant to this section may appeal such denial to the City manager or designee pursuant to the procedures set forth in PMC 5.04.340. To seek an appeal, said person must submit a written request for an administrative hearing with a statement of why the suspension or revocation did not merit any of the grounds for suspension or revocation under subsection (E)(1) of this section to the City Clerk within 10 days after service of notice of the City Manager's or designee's decision. Upon receipt of a timely appeal, the aggrieved party shall be given notice of a hearing and a hearing shall be held pursuant to PMC 5.04.340 through 5.04.360.~~

~~(3) No person whose permit is revoked shall be eligible to apply for a new permit for a period of one year following such revocation.~~

~~(4) Notices required or permitted to be served pursuant to this section may be served personally, or by mailing by certified or registered mail with proof of delivery at the residential address of record, or by licensed courier or delivery service with proof of personal delivery, or in any other manner provided by law.~~

~~(F) Conditions and Prohibitions. It is unlawful for any pedestrian solicitor or vehicle operator to sell or offer for sale any goods, merchandise, or services upon any public street or private street open to the public, except in accordance with all applicable provisions of this code, all State and Federal laws and regulations, the terms of their City-issued permit, and in compliance with each of the following requirements:~~

~~(1) Information Made Available to the Public and City.~~

~~(a) Each vendor shall possess and at all times display in conspicuous view upon their person or upon each vehicle, as the case may be, the actual business name and telephone number, and a City business certificate issued pursuant to this title.~~

~~(b) Each vendor shall possess and display, upon request by any potential customer or City representative, a vehicle operator's permit or pedestrian solicitor's permit issued pursuant to this chapter, or a full, true and correct copy thereof.~~

~~(c) Each vendor causing the sale of or offering for sale any produce or other food item for which a food handling permit or other health permit from the county health department required by law shall possess and present such required permits. Vendors must at all times display such required permits in conspicuous view upon such vehicle or have on their immediate person ready to present at all times.~~

~~(d) Each vendor who enters into a contractual or other private arrangement with an individual or entity that agrees to have food catered to a specific location on private land and which is open to the public shall possess and at all times display in conspicuous view upon their person or vehicle a copy of the contractual document or other private arrangement detailing the terms of the agreement along with the name and contact information of the individual or entity that agreed to have food catered on private lands.~~

~~(e) Each vendor shall possess and wear upon their person a City-issued badge, issued in connection with this chapter.~~

~~(2) Location.~~

~~(a) Vending is permitted only on public streets or private streets open to the public, and is not permitted in or upon any alley, parkway, sidewalk, or other kind of public property. Further, vending with a vehicle is not permitted in residential zones unless said vending is approved by the City in such zone in connection with a validly issued special event permit or temporary use permit, pursuant to PMC 17.27.030, prior to engaging in any residential vending.~~

~~(b) No vending shall be permitted within 50 feet of any intersection of two or more streets or any location that may impede a sidewalk or pedestrian traffic.~~

~~(c) No vending shall be permitted within 1,000 feet of the front entrance of any public or private elementary, junior high, or high school.~~

~~(d) No vending shall be permitted within 1,000 feet of the front entrance of any food establishment.~~

~~(e) No vending shall be permitted on City streets with a speed limit at or above 45 miles per hour.~~

~~(f) No vending shall be permitted at any public park unless the vending occurs as part of a City-sponsored function and the vendor has applied for and received a written endorsement on the operator permit expressly authorizing such vending.~~

~~(g) No vehicle shall be parked, stopped, or left standing in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon the public street.~~

~~(h) No vending shall be permitted until the vehicle has been brought to a complete stop and lawfully parked adjacent to the curb.~~

~~(i) No vendor shall operate in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon the public street.~~

~~(j) Vehicle vending shall be only by means of a vehicle duly registered and licensed by the State with an unladen weight of less than 6,000 pounds.~~

~~(k) All vending must ensure the safe and proper disposals of fats, oils, and greases ("FOGs") and be in compliance with applicable disposal regulations, including Los Angeles County Code (LACC), Title 20, Division 2, other laws, regulations, and ordinances concerning proper disposal of FOGs and other industrial wastes and health and safety State, local, and Federal laws.~~

~~(3) Sanitation and Trash.~~

~~(a) Each vehicle shall be equipped with a trash receptacle of a size adequate to accommodate all trash and refuse generated by vending therefrom.~~

~~(b) Each vendor shall pick up and deposit in the trash receptacle on the vehicle all paper, cups, wrapper, litter, or other refuse of any kind that was a part of the goods or merchandise supplied from the vehicle and which has been left or abandoned within 50 feet of such vehicle on any public property, other than in a trash receptacle provided for such purposes. No person shall dispose of any trash or refuse from vending operations in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of the vendor or operator.~~

~~(c) Each pedestrian solicitor shall operate within 100 feet of a trash receptacle.~~

~~(4) Operation – Hours, Amplified Sounds, Equipment, Prohibited Sales.~~

~~(a) Vending is permitted only between sunrise and sunset in residential zones.~~

~~(b) Any use of amplified sound-making devices, to advertise, draw attention to, or announce the presence of a vendor, shall also comply with all applicable noise and sound regulations effective within the City.~~

~~(c) No vending under this section may utilize chairs, tables, or other equipment unless City approval is given through an issued permit under this section.~~

~~(d) It is unlawful for any vendor to sell any item or thing which is otherwise prohibited from being sold within the City, including, but not limited to, any goods or products not identified in the application for a vehicle operator's permit or pedestrian solicitor's permit.~~

~~(5) Additional Regulations on Ice Cream Truck Vending.~~

~~(a) Safety and Sanitation.~~

~~(i) Each vendor shall ensure that the standard warning flashers shall be in operation immediately upon the vehicle stopping to vend and cease operation as the vehicle begins to move after vending.~~

~~(ii) Each vendor shall have signs painted or mounted on the front and back of each vehicle using black four-inch-tall letters on a yellow background with a black one-inch border around each sign. The sign on the front and back of each vehicle shall read "CHILDREN CROSSING" and be eight inches high by 48 inches wide. An additional sign or signs shall be painted or mounted on the rear of each vehicle above the first sign and shall read "WARNING" in English, Spanish, and Vietnamese, using the same size letter and paint requirements.~~

~~(iii) Each ice cream truck vendor shall pick up and deposit in the trash receptacle on the ice cream truck all paper, cups, wrapper, litter, or other refuse of any kind that was a part of the goods or merchandise supplied from the vehicle and which has been left or abandoned within 50 feet of such vehicle on any public property, other than in a trash receptacle provided for such purposes. No person shall dispose of any trash or refuse from vending operations in any such public or private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of the vendor or operator.~~

~~(iv) Each vendor shall have any other safety equipment and follow any other requirements mandated by the California Vehicle Code.~~

~~(b) Operation – Hours, Amplified Sounds, Location, Required Sales.~~

~~(i) Hours. Ice cream truck vending is permitted only between sunrise and sunset.~~

~~(ii) Amplified Sound Use by Ice Cream Truck Vendors. Any use of amplified sound-making devices, to advertise, draw attention to, or announce the presence of such vendor, shall also comply with all applicable noise and sound regulations effective within the City in addition to the following:~~

~~A. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck when the ice cream truck is stationary.~~

~~B. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck after sunset.~~

~~C. No person shall use, play or employ any sound, outcry, amplifier, production loudspeaker, or any other instrument or device for the production of sound from an ice cream truck in such a manner to create a disturbance of the peace.~~

~~(c) Location.~~

~~(i) No vending from such vehicle shall be permitted on City streets with a speed limit above 25 miles per hour.~~

~~(ii) No person shall stop to vend from an ice cream truck within 200 feet of another ice cream truck that has already stopped to vend.~~

~~(d) Prohibited Sales. Ice cream truck vendors shall only sell frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, prepackaged snack foods, or soft drinks.~~

~~(G) Special Events. Nothing in this section shall affect the City's ability to host, sponsor, allow, or authorize special events approved for vending purposes or with vending components. (Ord. 1606 § 5, 2023)~~

~~5.04.610 Private patrol service.~~

~~(A) Definitions. For purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Patrol service" means a business establishment in which the operator agrees to furnish, for consideration, any watchman, guard, patrol officer, or other individual, either uniformed or otherwise, to patrol any portion of the City, to guard against or prevent theft, unlawful taking, loss, misappropriation of property of any kind, or to act as an escort for a funeral procession. Patrol service does not include a service provided to protect a single individual's property where the person furnishing such service is employed solely by such individual.~~

~~(2) "Patrol officer" means a person engaged by a private patrol service to perform the functions described in subsection (A)(1) of this section.~~

~~(B) Permit Exemptions. Private patrol officers shall not be required to obtain a permit or to pay a permit fee. However, they must register with the Director and provide the Director with a photostatic or certified copy of their registration with the state pursuant to the State Private Investigator Act. If a private patrol officer does not have proof of current registration, then he or she must register with the City upon a form prescribed by the Sheriff's Department. No fee shall be charged for such registration.~~

~~(C) Application Information. In addition to the requirements set forth in PMC 5.04.140, an application for a private patrol service permit shall include the following information, as applicable:~~

~~(1) A map of the district, territory or area proposed to be served by the patrol service;~~

~~(2) A description of the proposed methods of operation;~~

~~(3) A description of any criminal offenses, other than traffic violations, committed by the applicant;~~

~~(4) A photostatic or certified copy of the applicant's state identification card issued pursuant to the State Private Investigator Act;~~

~~(5) A description of the areas of public or private property upon which the applicant intends to park vehicles used in the operation of the business;~~

~~(6) A description of the color scheme and insignia to be used on any patrol vehicles along with color photographs depicting the front, rear and both sides of such vehicles;~~

~~(7) A description of the color and design of the uniforms to be worn by any patrol officer employed by the applicant, along with color photographs depicting the front and sides of such uniform;~~

~~(8) A description of the badge to be worn by any patrol officer employed by the applicant, along with color photographs depicting the color, shape and size of the badge;~~

~~(9) A statement regarding the number of vehicles the applicant intends to use for patrol, their make, model, vehicle identification number, and license number; and~~

~~(10) A current list of the names, addresses and physical descriptions of all of the applicant's employees.~~

~~(D) Operating Requirements.~~

~~(1) Badges.~~

~~(a) Each patrol service permittee shall issue a patrol officer's badge to each of its patrol officers. Every patrol officer shall wear the badge while acting as a patrol officer and shall wear no other badge of any kind, character or description.~~

~~(b) The permittee shall not sell, or permit the sale of, any patrol officer's badge or any badge of a design that is the same as, or so similar to, the patrol officer's badge that the buyer thereof would be mistaken for a private patrol officer employed by the permittee when, in fact, the buyer is not.~~

~~(2) False Identification.~~

~~(a) No patrol officer shall wear any uniform which is an imitation of, or can be readily mistaken for, an official Sheriff's uniform or an official uniform of the police department of any city within the County, or an official uniform of any state officer, nor shall the words "POLICE" or "SHERIFF" appear on any badge, emblem, or uniform worn by such patrol officer.~~

~~(b) No patrol officer shall assume or use a rank or title identical, or similar to, any rank or title used by the Sheriff or by any police department within the County.~~

~~(c) No patrol service shall use, bestow or permit any patrol officer to assume or use any rank or title identical or similar to any rank or title used by the Sheriff or by a police department within the County.~~

~~(3) Motor Vehicle Markings. Motor vehicles used by a private patrol service or private patrol officer shall not bear markings or insignia that resemble the markings or insignia on official Sheriff's Department or Police Department motor vehicle, nor shall the words "POLICE" or "SHERIFF" appear on such markings or insignia.~~

~~(4) Conduct.~~

~~(a) An operator, partner, agent or patrol officer shall not, either alone or through the action of another, harass, annoy or commit a nuisance against or injure the property, or unnecessarily enter or otherwise trespass upon the property, of any person whose property the private patrol service or private patrol officer is not employed to protect.~~

~~(b) All complaints regarding the activities of a patrol service or of a patrol officer employed by such service shall be investigated by the Sheriff. Reports of such complaints shall be retained in the files of the Sheriff and shall be subject to inspection by the City Manager, the Director, or the City Council at all times.~~

~~(5) List of Customers. Each private patrol service shall keep a list of all customers and the private patrol officers assigned to guard or patrol such customers' premises. Such list shall be open to inspection by the Sheriff's Department.~~

~~(6) Report of Law Violations. No permittee under this section shall perform official police duties. The permittee shall ensure that every violation of law and every unusual occurrence coming to the permittee's attention or to the attention of its patrol officers in the performance of their duties is immediately reported to the Sheriff's Department. (Ord. 898 § 2, 1990)~~

~~5.04.620 Family entertainment center.~~

~~(A) Definitions. For purposes of this section, the following words shall have the following meanings:~~

~~(1) "Concession" means each ride, arcade booth, game, eating place, or other public attraction which is part of a family entertainment center, as defined in this section.~~

~~(2) "Family entertainment center" means a business enterprise providing one or more amusement rides or activities provided to the general public for which a fee or payment~~

~~may be charged for entry into the location, or participation on any of its rides, or in any of its activities, which is a permanent use rather than a temporary use as included in Section 27.03 of the Palmdale zoning ordinance. These rides and activities include but are not limited to the following: mini-car racing, bumper boats, bumper cars, carousels, ferris wheels, roller coasters or other similar mechanical apparatus or rides; water slides and similar water rides; ice skating or roller rinks; batting cages, miniature golf, or miniature soccer fields; BMX race tracks or bicycle course facilities; skateboard, roller blading or skating facilities; lazer tag and other interactive or virtual reality games (excluding video games and video arcades); games or tests of strength, skill or other capacity (excluding games of chance).~~

~~(B) General Requirements.~~

~~(1) Scope of Permit. A permit to operate a family entertainment center entitles the permittee to operate and manage the entire family entertainment center. It may also authorize the permittee to operate family entertainment center concessions; provided, that the concessions are specified in the application for the permit, or in an addendum thereto.~~

~~(2) Application Information.~~

~~(a) In addition to the information required by PMC 5.04.140, every person applying for a business permit to operate, conduct, or manage a family entertainment center shall file an application with the Director which shall contain the following information:~~

~~(i) If a corporation, the applicant shall provide a copy of its articles of incorporation;~~

~~(ii) A detailed description of the type of family entertainment center, manner of operation and hours of operation of the family entertainment center, including concessions;~~

~~(iii) A list of the names of all agents and employees involved in the operation and management of the family entertainment center or in the conduct of any concession;~~

~~(iv) A detailed schedule of the concessions to be operated by the applicant at the family entertainment center, including the various fees to be charged, the names of the persons in charge of each concession, and the rules for the operation of each such concession;~~

~~(v) Copies of all contracts, agreements, or other written memoranda between the applicant and any other person with respect to the operation of each concession;~~

~~(vi) A detailed description of the mechanical devices or equipment owned by or under the control of the applicant to be used in the operation of the family entertainment center or concession;~~

~~(vii) Copies of all policies and binders of liability insurance, including, but not limited to, vehicle, public, product and professional, and workers' compensation insurance held by the applicant;~~

~~(viii) Copies of the applicant's rules and regulations governing the operation of the family entertainment center or concession;~~

~~(ix) A statement that the applicant agrees to operate the family entertainment center or concession in strict accordance with the provisions of this section and all other applicable laws, and assumes full responsibility for the lawful and safe operation of the family entertainment center or concession.~~

~~(b) The application for permit shall be filed at least 60 days prior to the commencement of any family entertainment center.~~

~~(3) Security Plan Required. The applicant shall submit a detailed security plan which describes the proposed interior and exterior security measures applicable to the proposed business including, but not limited to, security guards, alarms, surveillance cameras and/or metal detectors.~~

~~(4) Emergency Plan Required. The applicant shall submit a detailed emergency plan which describes the actions to be taken in the event of a disaster or accident, including emergency medical care and evacuation procedures.~~

~~(5) Manager Required. A family entertainment center shall provide one or more managers, pursuant to PMC 5.04.050, to oversee the operation and orderly use of the games in the game arcade. Such manager(s) shall be on the premises of the family entertainment center during all hours that it remains open.~~

~~(6) Current Supplementary Information Required. The applicant or permittee shall be required to keep current the information required on the application for a family entertainment center or concession permit by supplementing or modifying the information to maintain its accuracy. Supplementary information shall include, but is not limited to, revised hours of operation of the family entertainment center or concessions; new or otherwise undisclosed agents and employees involved in the operation of the family entertainment center or concessions; and new or otherwise undisclosed concessions to be presented at the family entertainment center.~~

~~(7) Prior to Commencing Operation. The applicant shall obtain all City approvals, including approval of an occupancy review form and issuance of a business permit, prior to commencing operation of the family entertainment center.~~

~~(C) Operating Requirements.~~

~~(1) Responsibilities of Permittee. The family entertainment center permittee shall be responsible for the manner in which all rides, games and other concessions allowed under the family entertainment center permit are conducted. A family entertainment center concession permittee is similarly responsible for the operation of each concession for which it is permitted.~~

~~(2) Posting of Regulations. All rules pertaining to the operation of any ride, game, or other concession must be posted conspicuously at the location of the ride, game, or other concession. The fee for participating or otherwise engaging in any ride, game, or other concession must also be conspicuously posted.~~

~~(3) Maintenance of Equipment. All equipment, including mechanical equipment and rides, racing and obstacle courses shall be maintained in a good state of repair. No equipment shall be used unless fully operational and/or functional.~~

~~(4) Alcoholic Beverages or Drugs. No person may enter, remain in, or engage in any ride, game or other concession while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance. With respect to alcoholic beverages, consumption of alcoholic beverages may only be permitted within designated locations, as approved by the City, subject to all applicable permits for alcohol uses.~~

~~(5) Concessions – Operation Requirements.~~

~~(a) All players or participants in any game or other concession must be given an equal opportunity to play or participate. Prior to allowing any person to play or participate in any game or other concession, the concession operator shall collect the posted fee and return the proper change to the player or participant, if applicable. The concession operator shall not collect for more than a single game from any player or participant at any one time.~~

~~(b) No concessions other than those submitted to and approved by the Director shall be played, conducted, permitted, or allowed at the family entertainment center location.~~

~~(c) Any packaged merchandise distributed as a prize shall be plainly marked and its contents described conspicuously. Only items of merchandise that can actually be won~~

~~by any player may be displayed in conjunction with any game or other concession. No other merchandise or prize shall be displayed.~~

~~(6) Game of Chance Prohibited. Games of skill may be permitted under a family entertainment center or concession permit. Games of chance are prohibited.~~

~~(D) Operating Hours. A family entertainment center or concession may only operate between the hours of 7:00 a.m. and 10:00 p.m. on Sunday through Thursday, and no later than 12:00 midnight on Friday and Saturday, unless otherwise approved by the City.~~

~~(E) Insurance Requirements. Every applicant for a family entertainment center permit shall obtain and maintain in full force and effect public liability insurance in conformance with PMC 5.04.240. The liability coverage shall not be less than the amount of $1,000,000. (Ord. 1117 § 5, 1997; Ord. U-1117 § 5, 1997; Ord. 898 § 2, 1990)~~

~~5.04.650 Solicitation for charitable purposes.~~

~~(A) Defined Terms. The following terms and phrases are defined in subsection (G) of this section: "charitable organization," "charitable purpose," "contribution," "sales solicitation for charitable purposes," "solicit," and "solicitation for charitable purposes."~~

~~(B) Applicability of Exceptions.~~

~~(1) Any person who solicits any contribution, admission fee, or payment of any kind, even if exchanged for items or services of value, in any manner that would lead a reasonable person to believe that any portion of the contribution, admission fee, or payment solicited will be used for the benefit of or on behalf of any law enforcement, fire, paramedic or other governmental agency, or for or on behalf of employees of those agencies or their dependents, must comply with the provisions of this section as if those solicitations were for contributions for charitable purposes, or in the name of, or on behalf of, a charitable organization.~~

~~(2) Any person who for compensation received, or to be received, solicits, or is engaged in the business of, or represents to the public it is engaged in the business of soliciting contributions, admission fees, or payments in a manner described in subsection (B)(1) of this section on behalf of any other person or organization must comply with the provisions of this section as if that person was a commercial fundraiser for charitable purposes.~~

~~(3) The provisions of this section do not apply:~~

~~(a) To activities which the City is preempted from regulating by state law;~~

~~(b) To any solicitation made upon premises owned or regularly occupied by the organization upon whose behalf the solicitation is made;~~

~~(c) To any organization soliciting contributions solely from persons who are members of that organization at the time of the solicitation;~~

~~(d) To any organization soliciting contributions solely from members, guests, or invitees attending a charitable fundraising event sponsored by or on behalf of that organization;~~

~~(e) To any solicitation for the assistance or relief of any individual specified by name at the time of the solicitation where the solicitor represents in each instance that the entire amount collected, without any deduction or offset, will be delivered to the named beneficiary;~~

~~(f) To funds raised as authorized by Section 326.5 of the California Penal Code relating to bingo games;~~

~~(g) To the activities of any organization, or any person engaged by or under its authority, in soliciting donations of salvageable personal property solely from members of that organization, or in selling salvageable personal property obtained from the organization's members by that soliciting, or the soliciting and sale of salvageable personal property by an organization for occasional rummage sales or bazaars where that activity does not constitute a major part of the organization's activities and is not conducted as a permanent or continuous operation. This exemption also applies to an association which is exempt under Section 23701d or 23701f of the Revenue and Taxation Code if the membership of the association is comprised of persons with physical, mental or developmental disabilities and the primary purpose of the association is to provide services to persons with those disabilities.~~

~~(C) Application for Permit – Filing of Notice of Intention.~~

~~(1) No person may solicit in the City, and no person may authorize another person to solicit, any contribution for any charitable purpose, or in the name of, or on behalf of, any charitable organization, unless at least 15 days prior to the commencement of that solicitation a written notice of intention to solicit charitable contributions is filed with the Director on a form provided by the Director. The Director may, for good cause shown, allow the filing of a notice of intention less than 15 days prior to the commencement of the solicitation. The notice of intention may identify multiple solicitations of charitable contributions that are proposed to be made during any period of time not exceeding 12 months. The notice of intention must be accompanied by any filing fee in the amount established by resolution of the City Council.~~

~~(2) The notice of intention must contain the following information:~~

~~(a) The full legal name, principal business address, local business address (if any) and telephone number of the charitable organization by or on behalf of which the solicitation will be conducted. The notice of intention must be signed under penalty of perjury by an officer, employee or authorized agent of the named charitable organization. If the authorized agent is a commercial fundraiser for charitable purposes, as defined in subsection (G) of this section, the following supplemental information must be submitted:~~

~~(i) The original or a certified copy of the resolution, agreement, letter of consent, or similar documentation which authorizes the agency relationship between the named charitable organization and the commercial fundraiser for charitable purposes,~~

~~(ii) A statement as to whether the authorized agent is currently registered with the California Attorney General's Registry of Charitable Trusts and is in compliance with the financial reporting requirements of Government Code Section 12599 and has posted the cash deposit or surety bond in the sum of $25,000 as required by Government Code Section 12599.5,~~

~~(iii) A statement as to whether the authorized agent has obtained a City business license under Chapter 3.44 PMC;~~

~~(b) A proposed form of information card or, in the alternative, a copy of other printed material, such as a solicitation brochure, which the applicant will exhibit or distribute to prospective donors or purchasers during the course of the solicitation. Information on that card or other printed material must be presented in at least 10-point type and must include the following, as applicable:~~

~~(i) The name and principal business address of the organization, on behalf of which all or any part of the contributions collected will be used for charitable purposes. If there is no organization, the manner in which the contributions collected will be used for charitable purposes,~~

~~(ii) The non-tax-exempt status of the organization or fund, if the organization or fund for which the contributions are being solicited does not have a charitable tax exemption under both federal and state law,~~

~~(iii) The estimated percentage of the total contribution which may be deducted as a charitable contribution under both federal and state law. If no portion is deductible, a statement must appear that: "This contribution is not tax deductible.",~~

~~(iv) The estimated amount, stated as a percentage of the total contribution, that will be used for charitable purposes,~~

~~(v) If a commercial fundraiser for charitable purposes is to be engaged, and is to be paid a set fee rather than a percentage of the total amount raised, a statement of the estimated total cost to be incurred for direct fundraising expenses,~~

~~(vi) If the solicitation is not a sales solicitation, the applicant may include a statement, in lieu of estimating the total amount of fundraising expenses to be incurred, that an audited statement of these fundraising expenses may be obtained by contacting the organization or fund at the address disclosed;~~

~~(c) Documents from the Internal Revenue Service and the California Franchise Tax Board which establish the tax-exempt status of the named charitable organization;~~

~~(d) The names, addresses and telephone numbers of the principal officers and members of the board of trustees or board of directors of the named charitable organization;~~

~~(e) The purpose for which the solicitation is to be made, the total amount of contributions proposed to be raised, and the use or disposition to be made of the contributions received from the solicitation;~~

~~(f) A description of the method or methods to be used in conducting the solicitation;~~

~~(g) The name, residence address and telephone number of the person or persons who will be in direct charge of and responsible for conducting the solicitation;~~

~~(h) The name, residence address and telephone number of each solicitor who, for monetary compensation, will participate in the solicitation and to whom an identification card will be issued by the Director in accordance with subsection (D)(8) of this section. If these solicitors are employed by or under the control of a commercial fundraiser for charitable purposes registered with the California Attorney General, evidence must be submitted that the named solicitors and the commercial fundraiser for commercial purposes possess a City business license under Chapter 3.44 PMC. If the solicitation will be conducted solely by regular employees of the named charitable organization, or by members or volunteers of that charitable organization who will not be paid any monetary compensation, then the Director may waive the disclosure requirement of this subsection and may authorize the named charitable organization to issue its own identification cards to its solicitors in the format specified in subsection (D)(8) of this section;~~

~~(i) A description of the nature and extent of charitable work being performed in the City by the named charitable organization.~~

~~(3) If, during the period for review of the notice of intention, or during the terns of any permit issued for the solicitation, there is any significant change in fact, policy or method that would alter the information set forth in the notice of intention, the applicant must notify the Director in writing within 48 hours after that change.~~

~~(4) All information set forth in the notice of intention, and any additional information provided by the applicant relating to that notice, will be a matter of public record and will be open to public inspection.~~

~~(D) Issuance of Permit and Identification Cards – General Provisions.~~
~~(1) Review of Notice of Intention. The Director must review the notice of intention filed under subsection (C) of this section. The applicant must make available for inspection, upon the Director's request, all of the applicant's financial books and records at any reasonable time before the permit is issued, during the time the permit is in effect, or after the permit has expired. The Director may inspect those financial books and records solely for the purpose of verifying the truth and accuracy of the information contained in the notice of intention, or the truth and accuracy of any representation made by the permittee with regard to any solicitation conducted under this section.~~

~~(2) Issuance of Permit. The Director must issue a permit to the applicant no later than 15 days after the filing of a notice of intention unless any of the following deficiencies exist which have not been corrected following written notification by the Director to the applicant of that deficiency:~~

~~(a) The notice of intention is incomplete or otherwise fails to disclose the information required by subsection (C)(2) of this section;~~

~~(b) A statement made in the notice of intention is factually incorrect.~~

~~(3) Authority of the Director. Nothing in this section is to be construed as conferring upon the Director, or upon any other person, the authority to grant, deny, revoke, renew or suspend any permit by reason of either approval or disapproval of the philosophy, opinions, or beliefs of the applicant, their permittee, or the person represented by the applicant or permittee, or for any other reasons not specifically set forth in this section.~~

~~(4) Form of Permit. Permits issued under this section must bear the name, address and telephone number of the person to whom the permit is issued, the name and address of the charitable organization by or on behalf of which the solicitation is to be conducted, the~~

~~number of the permit, the date issued, the dates within which the permittee may solicit, and a statement that the permit does not constitute an endorsement of the solicitation by the City, or by any of its departments, officers or employees. The Director must sign all permits.~~

~~(5) Term of Permit. Unless renewed, revoked or suspended in accordance with the provisions of this section a permit is valid for a period of 30 days, and if the permit authorizes multiple solicitations, it may be valid for a period of up to 12 months.~~

~~(6) Permit Nontransferable. No permit issued under this section is transferable or assignable.~~

~~(7) Renewal of Permit. Upon the expiration of any permit, and if requested in writing so to do, the Director will renew the permit within 10 days of that request if the factual information upon which the original permit was granted remains unchanged, and no violation of this section has occurred. The Director may require that a new notice of intention be filed in accordance with the provisions of this section.~~

~~(8) Identification Cards.~~

~~(a) Form of Identification Card. Upon issuance of the permit, the Director will issue an identification card to each solicitor named in the application who, for compensation, will participate in the solicitation. The identification card must bear the permit number, the expiration date of the permit or the name and address of the permittee, the name and address of the charitable organization which is represented (if different from the named permittee), and the photograph, name of the solicitor, and state that the solicitation is not in any manner an endorsement by the City, or by any department, officer or employee of the City. If the solicitation will be conducted solely by regular employees of the named charitable organization, or by members or volunteers of that charitable organization who will not be paid any monetary compensation, then the Director may authorize the permittee to issue its own identification cards to its solicitors. Unless otherwise authorized by the Director, these identification cards must bear the permit number, the expiration date of the permit, the name of the solicitor and the name and address of the permittee.~~

~~(b) Display of Identification Cards. No person may solicit any contributions unless the identification card is affixed to the solicitor's clothing in a conspicuous manner so that any person being solicited may observe the identification card and its contents. The identification card must either be read to or presented for inspection by the person solicited before any contribution is requested, offered or accepted.~~

~~(c) Disposal of Identification Cards. Upon expiration of the permit, or upon the earlier termination of the authorized solicitation, the permittee must collect and destroy all identification cards previously issued by the City to the permittee's solicitors. At all times, these identification cards remain the property of the City. Identification cards issued by an authorized permittee to its employees, members or volunteers must be collected from the solicitors and disposed of.~~

~~(E) Operating Requirements.~~

~~(1) Time of Solicitation. It is unlawful for a solicitor, agent or representative of any permittee to go upon any residential premises after 8:00 p.m., or earlier than 9:00 a.m., for the purpose of solicitation, unless the permittee has been explicitly requested or invited to do so by the owner or occupant of the residential premises. Nothing herein may be construed to grant any person permission to enter upon any private property at any time without the express consent of the owner or occupant of that property.~~

~~(2) Written Receipts Required. Any permittee, or any solicitor, agent or representative of a permittee, receiving money or any other contribution having a value of $5.00 or more from any donor or purchaser following a solicitation authorized by a permit must deliver to the donor or purchaser, upon request, a written receipt signed by the solicitor, showing plainly the name and permit number of the permittee conducting the solicitation, the date, and the amount received; but this requirement does not apply to contributions from anonymous donors collected by means of a closed receptacle or collection box used in a solicitation authorized by a permit issued by the Director if (i) there is attached to the receptacle or box a copy of the information card or other written material approved by the Director; and (ii) the receptacle or box bears a number or other identification mark; and (iii) a written list showing the location and name of the solicitor in charge of each receptacle or box has previously been filed with the Director in connection with an authorized solicitation.~~

~~(3) Manner of Solicitation. It is unlawful for a permittee, or for a solicitor, agent or representative of a permittee, to engage in any of the following activities:~~

~~(a) To solicit members of the public by direct personal contact without an identification card duly issued by the Director to a solicitor named in the permittee's notice of intention, or by a charitable organization authorized by the Director to issue identification cards to its solicitors;~~

~~(b) To solicit members of the public by direct personal contact without exhibiting or distributing the information card, or other printed material, such as a solicitation brochure,~~

~~in the form set forth in the notice of intention and authorized by the permit issued by the Director;~~

~~(c) To solicit a contribution for or on behalf of any charitable organization which does not maintain financial records on the basis of generally accepted accounting principles;~~

~~(d) To allow any child under the age of 10 years to solicit a charitable contribution unless accompanied by a person who is 18 years of age, or older, and who keeps that child at all times within that person's sight and hearing;~~

~~(e) To solicit a contribution by telephone unless the solicitor delivers to any person who so requests, a copy of the information card or other printed material, approved by the permit issued by the Director;~~

~~(f) To solicit upon or within any private property, dwelling, house, apartment, condominium, place of abode, or place of business, where there is a posted sign stating, in effect, that its owners or occupants do not desire to be solicited or to have their privacy disturbed, such as "No Solicitors or Canvassers," "No Solicitations," or "Do Not Disturb";~~

~~(g) To touch, come into physical contact with, or affix any object to the person of any prospective contributor, or other member of the public, in furtherance of any solicitation authorized by this section, without first obtaining explicit permission to do so from that prospective contributor or member of the public;~~

~~(h) To continue the solicitation of any prospective contributor or other member of the public after that person, by verbal or nonverbal means, expresses a desire not to make a contribution;~~

~~(i) To obstruct or impede the free movement of any person on any street, sidewalk or public right-of-way, or in any place generally open to the public, including parking lots;~~

~~(j) To solicit from a "captive audience," which term includes intentionally stationary persons, such as persons standing in lines or seated in public areas;~~

~~(k) To intimidate, coerce, force or extort a contribution from any person, or to threaten any injury or damage to a person who declines to be solicited or declines to make a contribution;~~

~~(l) To solicit a contribution from any person by means of a misrepresentation of any kind concerning the solicitor's name, occupation, physical or mental condition, financial condition, residence, or principal place of business;~~

~~(m) To make or cause to be made any misstatement of fact or fraudulent misrepresentation in connection with the solicitation of any contribution in the City, or in connection with any application or report required to be filed under this section;~~

~~(n) To solicit a contribution using a name, symbol, trademark, logo, service mark, or other identification so closely related to, or similar to that used by, another charitable organization that its use would tend to confuse or mislead a prospective contributor or any other member of the general public;~~

~~(o) To solicit a contribution using statements, materials, or other means of inducement which indicate that contributions are being raised for any charitable organization which has not, in fact, provided to the Director evidence of its express written consent to the solicitation of those contributions;~~

~~(p) To stand upon or within any public street, highway or median, for the purpose of soliciting or attempting to solicit a contribution from the driver or passengers of any vehicle;~~

~~(q) To solicit, or attempt to solicit, any contribution in any manner prohibited by the provisions of Chapter 10.04 PMC, or any other applicable ordinances or statutes;~~

~~(r) To place or to leave at any residence or place of business any solicitation brochures, fliers, or other printed matter, or any bags, containers, or other receptacles for new or used goods or merchandise, without adequately securing that printed matter or those receptacles in such a manner as to prevent them from creating litter or visual blight in the immediate vicinity.~~

~~(4) Disclosure by Commercial Fundraisers for Charitable Purposes. A permittee, or any solicitor, agent or representative of a permittee who, for compensation, solicits contributions in the City for charitable purposes must disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television or telephone, or at the same time as a written solicitation or sales solicitation:~~

~~(a) That the solicitation or sales solicitation is being conducted by a commercial fundraiser for charitable purposes; and~~

~~(b) The name of the commercial fundraiser for charitable purposes as registered with the California Attorney General pursuant to Section 12599 of the Government Code.~~

~~(5) Report May Be Required from Permittee. The permittee may be requested to file with the Director a financial report setting forth the amount raised by the solicitation, the~~

~~amount expended in conducting the solicitation, including a report of the wages, fees, commissions, and expenses paid to any person in connection with the solicitation, and the actual or proposed disposition of the balance of any funds collected during the solicitation. The permittee may also be required by the Director to make available for inspection all financial books, records, receipts and other documents whereby the accuracy of the required financial report may be verified. The filing requirement must be imposed by the Director, if at all, within 60 days after the earlier of the expiration of the permit or the termination of the authorized solicitation. The required financial report must be filed within 60 days after the Director's request.~~

~~(F) Summary Suspension of the Permit. Whenever it is shown that any person to whom a permit has been issued is in violation of any provision of this section, or that any solicitor, agent or representative of a permittee has misrepresented the purpose of the solicitation, the Director is authorized to immediately suspend the permit. The Director must either send by registered mail or personally deliver to the permittee written notice of the suspension, stating with specificity the reasons for suspension. The Director must forthwith notify the Sheriff's Department, and also report the suspension to the City Council at the next regular meeting of that body following the action. The permittee may appeal the suspension in the manner specified by PMC 5.04.340.~~

~~(G) Definitions. For the purposes of this section, the following terms have the following meanings:~~

~~"Charitable organization" means and includes any individual who, or any nonprofit community organization, patriotic, philanthropic, benevolent, educational, religious, fraternal, civic, cultural or service organization, or governmental employee organization which, solicits or obtains contributions solicited from the public for charitable purposes or holds any assets for charitable purposes.~~

~~"Charitable purpose" means and includes an activity, function or objective which would qualify an organization, association, corporation, or other legal entity for tax-exempt status under Article 1, Chapter 4, Part 11, Division 2 of the California Revenue and Taxation Code (Section 23701 et seq.), regardless of whether that tax-exempt status has actually been established.~~

~~"Commercial fundraiser for charitable purposes" means any individual who, or any corporation or other legal entity which, for compensation does either of the following: solicits funds, assets, or property in the City for charitable purposes; or as a result of a solicitation of funds, assets, or property in the City for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes. This term does not include: (i) a "trustee" as defined in Section 12582 or 12583 of the Government Code;~~

~~(ii) a "charitable corporation" as defined in Section 12582.1 of the Government Code, or any employee thereof; (iii) an individual who is employed by or under the control of a commercial fundraiser for charitable purposes registered with the California Attorney General; or (iv) any federally insured financial institution which holds as a depository funds received as a result of a solicitation for charitable purposes.~~

~~"Contribution" means and includes a pledge, gift or donation of food, clothing, money or property, as well as any donation under the guise of a loan of property or money.~~

~~"Sales solicitation for charitable purposes" means the sale of, offer to sell, or attempt to sell any advertisement, advertising space, book, card, chance, coupon device, magazine subscription, membership, merchandise, ticket of admission, or any other thing or service in connection with which: (i) any appeal is made for charitable purposes; or (ii) the name of any charitable organization is used or referred to in that appeal as an inducement for making the sale; or (iii) any statement is made to the effect that all or any part of the proceeds of the sale will go to any organization or be used for any charitable purposes.~~

~~"Solicit," or any of its derivatives, means to request, directly or indirectly, a contribution of money, credit, property, financial assistance, or other things of value upon the plea or representation, express or implied, that such money, credit, property, financial assistance, or other things of value will be used by a charitable organization or for a charitable purpose. The term "solicit" also means any of the following methods of obtaining money, credit, property, financial assistance, or other things of value upon the plea or representation, express or implied, that such will be used by a charitable organization or for a charitable purpose: (i) any verbal or written request; (ii) an announcement to the media for further dissemination by it concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize, or to which the public is requested to make a contribution for any charitable purpose connected with that event; (iii) the distribution, circulation, mailing, posting or publication of any handbill or other written advertisement which, directly or by implication, seeks contributions from the public for one or more charitable purposes, unless that handbill or other written advertisement has been placed within a business open to the public generally and with the express permission of the owner or operator of that business; or (iv) the placement in any public or private place of any box or receptacle for the purpose of receiving contributions. A solicitation, as herein defined, is deemed completed when made, whether or not the person making it receives any contribution or makes any sale referred to in this section.~~

~~"Solicitation for charitable purposes" means any request, plea, entreaty, demand, or invitation to give money or property, in connection with which: (i) any appeal is made for~~

~~charitable purposes; or (ii) the name of any charitable organization is used or referred to in that appeal as an inducement for making the gift; or (iii) any statement is made to the effect that the gift, or any part of it, will go to any charitable organization or be used for any charitable purpose. (Ord. 1069 § 2, 1995)~~

~~5.04.660 Taxicab business.~~

~~(A) Definitions. For the purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Director" means the Director of Economic and Community Development or his or her designee.~~

~~(2) "Owner" or "taxicab owner" means the person, firm, association or corporation who is registered with the California Department of Motor Vehicles ("DMV") as the owner of a vehicle or vehicles used in the transportation of persons for compensation, or who has a legal right to possession of such vehicle pursuant to a lease or rental agreement. The act or omission of any owner's officer, agent, employee or independent contractor, or of any driver whose services are engaged by any of the above, is for all purposes the act or omission of the owner operating the for-hire transportation services regulated by this chapter.~~

~~(3) "Person" means any natural person, firm, corporation, partnership, joint venture, or association of persons.~~

~~(4) "Stand" or "taxicab stand" means a public place alongside the curb of a street or elsewhere in the City, which has been designated by the City Engineer, or his or her designee, to be reserved exclusively for the use of taxicabs.~~

~~(5) "Substantially located" shall have the same meaning as defined in Government Code Section 53075.5, as amended from time to time.~~

~~(6) "Taxicab" means a passenger vehicle, designed for carrying not more than eight persons, excluding the driver, used to transport persons for compensation on public streets; the compensation for which is determined by a taximeter or flat rate which determines a charge for distance traveled and/or time expended.~~

~~(7) "Taximeter" means any instrument or device approved for use under the applicable laws of the state, which mechanically or electronically calculates the charge for the use of a taxicab.~~

~~(B) Taxicab Business Permit Requirements.~~

~~(1) No owner of a taxicab business that is substantially located in the City shall operate or permit the operation of a taxicab as a vehicle for hire on the streets of the City without having obtained from Director a taxicab permit pursuant to the provisions of this section.~~

~~(2) A taxicab company substantially located and permitted by another city within Los Angeles County or by the County of Los Angeles may only provide prearranged trips in the City. "Prearranged trip" means a trip requested using an online-enabled application, dispatch, or internet website.~~

~~(C) Application. In addition to the information required by PMC 5.04.140, applications for a taxicab business permit shall contain the following information, as applicable:~~

~~(1) The name, residence, business address and telephone number of the applicant;~~

~~(2) The fictitious business name, if any, under which the applicant does business or proposes to do business;~~

~~(3) The name and address of all directors, officers, shareholders, partners, employees or other individuals who are financially interested in the proposed operation of the taxicab business or who are involved or proposed to be involved, directly or indirectly, with the management of the business;~~

~~(4) Data verifying that the taxicab company is substantially located within the City to include the business address and the trip data showing that the total number of prearranged and non-prearranged trips that originate within City's jurisdiction account for the largest share of the taxicab company's total number of trips over the previous calendar year;~~

~~(5) The number of vehicles for which a permit is desired, the description of each vehicle, giving the license number, vehicle identification number, model, make, year of manufacture and passenger seating capacity;~~

~~(6) The color scheme, name, monogram or other distinguishing insignia proposed to be used on each vehicle;~~

~~(7) The make and type of taximeter intended to be used in each taxicab;~~

~~(8) The street number and exact location of each taxicab stand which the applicant proposes to use (if any);~~

~~(9) The proposed schedule of rates or fares to be charged;~~

~~(10) Evidence of participation in, and compliance with, a mandatory controlled substance and alcohol testing certification program, as required in subsection (G) of this section;~~

~~(11) The experience of the applicant in the transportation of passengers;~~

~~(12) Whether any license, permit or certificate issued to the applicant has been denied, revoked or suspended by any public organization. The circumstances of said denial, revocation or suspension shall be fully explained;~~

~~(13) Whether the applicant has been convicted of a crime within five years prior to the date of the application, including the nature of the crimes; and~~

~~(14) Such additional information as the Director deems necessary.~~

~~(D) Investigation by Sheriff's Department. The following procedure shall be followed prior to the approval of a taxicab permit:~~

~~(1) Referral to Sheriff's Department. Following receipt by the Director of a completed application for a taxicab permit, the Director shall refer the application to the Sheriff's Department. The Sheriff's Department shall conduct an investigation of the applicant and submit a report to the Director concerning the following:~~

~~(a) The character, reputation and integrity of the applicant and those individuals named in the application who are or will be affiliated with the applicant.~~

~~(b) Whether the vehicles proposed to be operated are adequate for the purpose intended, are equipped with all safety devices required by law, and will have an approved make of taximeter.~~

~~(2) The Director shall not issue a taxicab permit unless the applicant demonstrates:~~

~~(a) That the vehicles described in the application and proposed to be used as taxicabs are adequate and safe for such purpose;~~

~~(b) That the color scheme, monogram, name or insignia proposed to be used upon such taxicabs is not in conflict with and does not imitate any color scheme, name, monogram or insignia used by any other person in such manner as to mislead or tend to deceive or defraud the public; and that no other color scheme, monogram, name or insignia has heretofore been designated for the applicant;~~

~~(c) That the location of the proposed taxicab stand or stands for such business is such that it or they will not congest or interfere with travel on any street or the use thereof by the public, and that the proposed stands are not within 300 feet of any other stand on the same street.~~

~~(3) Grounds for Denial of Permit. In addition to the grounds for denial set forth in PMC 5.04.200, the Director may deny a permit if any of the standards required by subsection (D)(2) of this section are not met.~~

~~(E) General Procedures.~~

~~(1) Modification of Permit. A permit holder may request a modification to their permit by submitting a new permit application pursuant to this chapter.~~

~~(2) Transfer of Permits Prohibited. No taxicab permit may be sold, assigned, mortgaged or otherwise transferred without the prior consent of the Director.~~

~~(3) Duration of Permits. The initial taxicab permit issued hereunder to any applicant shall be valid for a period of one year. Thirty days prior to the expiration of the one-year period, the permittee may submit an application for a new permit, accompanied by all applicable fees, which application shall likewise be subject to the requirements of this section.~~

~~(4) Discontinuance of Service Automatically Cancels Permit. If the service for which a permit is granted hereunder is discontinued for a period of 45 days, the permit granted hereunder shall automatically be null and void and shall be reissued only in accordance with the provisions of this section.~~

~~(F) Taxicab Driver's Permit Required.~~

~~(1) No person shall operate any taxicab in the City unless the person has a valid taxicab driver's permit to do so as hereinafter provided. The taxicab driver's photo permit shall be posted in a place conspicuous from the passenger's compartment of the taxicab.~~

~~(2) A taxicab driver substantially located and permitted by another city within the County or by the County may operate in the City on a prearranged basis only. That driver may pick up trips originating through online enabled application, phone dispatch, or internet website.~~

~~(3) Application Information. Notwithstanding PMC 5.04.140, the application for a taxicab driver's permit shall contain the following information, as applicable:~~

~~(a) The applicant's full name, address, telephone number and age;~~

~~(b) The applicant's last two previous addresses;~~

~~(c) The applicant's business, occupation or employment for the three years immediately preceding the application, including a statement of any similar permit held in another city or state;~~

~~(d) The applicant's height, weight and color of eyes and hair;~~

~~(e) Information necessary for a criminal background check;~~

~~(f) Certification that applicant has tested negatively for controlled substances and alcohol under a mandatory controlled substance and alcohol testing certification program as required by subsection (G) of this section;~~

~~(g) A statement as to whether the applicant has ever been convicted of any crime, misdemeanor, or violation of any municipal, state or federal law, the nature of the offenses, and the punishment or penalty assessed therefor;~~

~~(h) The number and expiration date of the applicant's California driver's license;~~

~~(i) The endorsement of the owner of the taxicab business for which the applicant will be operating a taxicab;~~

~~(j) Such other identification and information as the Director may require.~~

~~(4) Investigation. Notwithstanding the provisions of PMC 5.04.180, following receipt by the Director of the completed application for a taxicab driver's permit, the application shall be referred to the Sheriff's Department. The Sheriff's Department shall conduct an investigation of the applicant and recommend approval or denial based upon the character, reputation and integrity of the applicant.~~

~~Notwithstanding the preceding paragraph, the Director may issue a taxicab driver's permit to an applicant upon being provided with an authenticated copy of a current license or permit issued by another governmental entity located in Los Angeles County; provided, that the Director determines that a satisfactory investigation of the applicant's qualifications has been made.~~

~~(5) Grounds for Denial of Taxicab Driver's Permit. In addition to the grounds of denial set forth in PMC 5.04.200, the Director may deny a taxicab driver's permit if:~~

~~(a) The applicant is not of good moral character, or is under the age of 18 years, or is not competent to operate a taxicab safely on the City streets, or is otherwise not a fit or proper person to be in charge of, or to operate, any such motor vehicle;~~

~~(b) The applicant does not possess a valid Class C driver's license issued by the California Department of Motor Vehicles;~~

~~(c) The applicant has been convicted in a court of competent jurisdiction of reckless driving or driving under the influence of alcohol or narcotics;~~

~~(d) The applicant has, within the preceding 12 months, been convicted of, or pleaded guilty to, more than one moving violation under the California Vehicle Code; or~~

~~(e) The applicant has been convicted of a felony or a crime involving moral turpitude.~~

~~(6) Termination of Employment or Contract.~~

~~(a) The taxicab driver's permit shall be automatically revoked upon the termination of the driver's employment or contract with the owner who endorsed the permit application as required by subsection (F)(3)(i) of this section.~~

~~(b) Within 24 hours after any termination of employment or contract, the owner and driver shall jointly notify the Director in writing of such termination and surrender any taxicab driver's permit in their respective possessions. If said permit is unavailable, the owner and driver shall state on the notification the unavailability of the permit and the reasons therefor.~~

~~(G) Controlled Substances and Alcohol Program.~~

~~(1) No taxicab business license shall be issued or renewed unless the holder at the time of permit issuance or renewal files with the Director a certification that the holder maintains a mandatory controlled substance and alcohol testing certification program conforming to 49 CFR Part 40 (Section 40.1 et seq.) and Part 382 (Section 382.101 et seq.) and California Government Code Section 53075.5 for all drivers of vehicles operated under the certificate.~~

~~(2) No taxicab driver's permit shall be issued or renewed unless the holder at the time of the permit issuance or renewal files with the Director a certification that the driver operating under the permit has tested negatively for controlled substances and alcohol under a mandatory controlled substance and alcohol testing certification program~~

~~conforming to Parts 40 and 382 of Title 49 of the Code of Federal Regulations and California Government Code Section 53075.5.~~

~~(3) An applicant that receives a positive test result during a pre-employment drug screening procedure may not resubmit an application for a taxicab driver's permit for a period of five years.~~

~~(4) If a taxicab driver tests positive during a random drug screening process, the taxicab driver's permit will be suspended until the driver has successfully completed all the requirements placed on him/her by the Substance Abuse Professional (SAP). If this same taxicab driver tests positive again during a random drug screening process, his/her taxicab driver's permit will be revoked for a period of not less than five years.~~

~~(H) Taxicab Equipment and Operating Requirements.~~

~~(1) Public Liability Insurance. Each permittee shall file with the Director a policy of liability insurance pursuant to PMC 5.04.240. The policy(ies) of insurance shall be in the following amounts:~~

~~(a) Commercial general liability: combined single limit of $1,000,000 per occurrence;~~

~~(b) Commercial automobile liability: $300,000 combined single limit including owned, non-owned and hired automobile coverage (or comparable as approved by Director).~~

~~(2) Taximeters Required. The taxicab owner shall equip all taxicabs operating in the City with a device or technology approved by the Division of Measurement Standards to calculate fares, including the use of Global Positioning System metering; provided, that the device or technology complies with Section 12500.5 of the Business and Professions Code and with all regulations established pursuant to Section 12107 of the Business and Professions Code ("taximeter"). It shall be the duty of every taxicab owner to keep such taximeter accurate at all times so that it indicates the correct charge for the distance traveled and waiting time. All taximeters shall be subject to inspection from time to time by Code Enforcement Officers and the Sheriff's Department. The Sheriff's Department and Code Enforcement Officers are authorized to inspect any taximeter and, upon discovery of any inaccuracy therein, to notify the person owning or operating the taxicab in which the defective taximeter exists to cease operation of that taxicab. Thereupon, such taxicab shall not be used until the taximeter is repaired and restored to proper working condition.~~

~~(3) It shall be the duty of the driver to cause the taximeter to begin calculating the fare at the start of each trip and stop calculating the fare at the termination of each trip; provided,~~

~~however, that it shall be unlawful for the driver to clear or remove from the taximeter the amount of the charges prior to payment of the amount indicated.~~

~~(4) Rates, Fares and Charges for Taxicab Service.~~

~~(a) The rates, fares and charges for taxicab service originating in the City shall in no event exceed the highest rates, fares and charges for taxicab service approved by the city of Los Angeles.~~

~~(b) The permittee shall disclose fares, fees, or rates to the customer. A permitted taxicab company may satisfy this requirement by disclosing fares, fees, or rates on its internet website, mobile telephone application, or telephone orders upon request by the customer. The rates, fares and charges for the transportation of passengers in taxicabs operated in the City shall be as indicated on the taximeter, and it shall be unlawful for the driver of any taxicab to charge, demand or collect an amount in excess of that computed and shown by the taximeter. The taximeter shall be adjusted to accurately compute the current rates, fares and charges, but not in excess of the limits authorized in this section. The taximeters shall be placed so that the amount to be charged shall be well-lit and readily discernible by the taxicab passenger.~~

~~(c) The permittee shall notify the passenger of the applicable rate prior to the passenger accepting the ride for walkup rides and street hails. The rate may be provided on the exterior of the vehicle, within an application of a mobile telephone, device, or other internet-connected device, or be clearly visible in either print or electronic form inside the taxicab.~~

~~(d) The City Council shall have the power, following a hearing upon its own motion or upon a complaint, to investigate a single rate or fare or the entire schedule of rates and fares in effect, which are charged, demanded or collected for taxicab service and to authorize new rates or fares or new schedules thereof. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing in accordance with PMC 2.08.090.~~

~~(5) Direct Route of Travel. No driver of a taxicab hired to carry passengers to a definite point shall take any route other than the most direct route possible, consistent with passenger safety and expeditious transportation to such destination.~~

~~(6) Receipts. Every driver of a taxicab shall, upon request of a passenger, issue a receipt evidencing payment of the correct fare.~~

~~(7) Interior Displays in Taxicabs. Every taxicab shall display in the passenger's compartment, permanently affixed to the rear of the driver's seat and in full view of the passengers, the following items:~~

~~(a) A card not less than four inches by six inches in size which shall have printed thereon the taxicab owner's name or fictitious business name, the business address and telephone number of the taxicab owner, the rates to be charged for conveyance in the taxicab (including rates for minimum flag drop, mileage and waiting time), and a statement that such rates are applicable to all trips originating in the City; and~~

~~(b) A cardholder for the placement of a taxicab driver's permit. Such cardholder shall contain a notice which, upon the removal of the taxicab driver's permit, shall be visible to passengers and which states that the taxicab driver's permit is required to be displayed at all times while the taxicab is in operation.~~

~~(8) Manifests.~~

~~(a) Each taxicab driver shall maintain a separate manifest for every service rendered, which manifest shall include the following information:~~

~~(i) Location where passengers entered the taxicab;~~

~~(ii) Time of entry;~~

~~(iii) Location where passengers were discharged;~~

~~(iv) Number of passengers; and~~

~~(v) Amount of fare collected.~~

~~(b) The taxicab owner shall retain all manifests at its principal office for a period of 90 days after the date of service rendered, and the same shall be made available for inspection during normal business hours by any authorized representative of the City.~~

~~(9) Safety Inspection.~~

~~(a) All taxicab companies shall maintain motor vehicles used in taxicab transportation services in a safe operating condition, and in compliance with the Vehicle Code, subject to annual inspection at a facility that is certified by the National Institute for Automotive Service Excellence or a facility registered with the Bureau of Automotive Repair. The inspection shall be completed prior to the issuance of the taxicab business permit. If the~~

~~taxicab successfully completes the safety inspection, a taxicab safety permit sticker shall be issued and shall be displayed on the left side of the taxicab's rear bumper.~~

~~(b) The registered owner of a taxicab, who is aware of or should have been aware of any unsafe condition of the taxicab, shall not allow the taxicab to be used until necessary repairs are made.~~

~~(10) Safety and Cleanliness of Taxicabs. Each taxicab subject to this section shall be maintained in a safe, clean and sanitary manner. No person shall operate a taxicab which is unsafe, unsuitable for service, or which contains defective equipment. The following conditions shall, without limitation, be deemed to make a vehicle unsuitable or unsafe for taxicab service:~~

~~(a) Excessive leakage of oil, grease, gas or any other substance from any part of the vehicle;~~

~~(b) The existence of any defects in the frame of the vehicle;~~

~~(c) The failure of any movable parts of the vehicle, including doors, windows, hood, trunk, lights, etc., to function properly;~~

~~(d) Failure to maintain the tires, lights, turning signals, or brakes in safe operating condition;~~

~~(e) Failure to maintain the motor and other mechanical parts of the vehicle in safe operating condition;~~

~~(f) Failure to have an adequate exhaust system, in compliance with state law, properly installed and in good working condition;~~

~~(g) The existence of excessive dents or scratches in the body of the vehicle;~~

~~(h) Improper maintenance of the exterior paint in the authorized color scheme;~~

~~(i) The existence of excessive wear and tear on the upholstery, floor mats and other parts of the interior of the vehicle; and~~

~~(j) Failure to have adequate interior lighting in proper working condition.~~

~~(11) Taxicab Stands.~~

~~(a) Designation of Taxicab Stands.~~

~~(i) Upon granting a permit to engage in the taxicab business, the Director of Public Works shall designate the exact location of each stand which the permittee may use. Such stands, and any additional or alternate stands subsequently authorized hereunder, shall be prepared, marked and maintained by the Public Works Department, and the costs thereof shall be collected from the permittee.~~

~~(ii) Any permittee hereunder may apply for a change in the location of any taxicab stand or for the use of additional taxicab stands. Such application shall be filed with the Director of Public Works. The application shall set forth the proposed new location, shall be accompanied by an application fee in such amount as may be fixed by resolution of the City Council for each stand to be established or relocated, and shall have attached thereto the written consent of all persons owning, leasing or occupying the ground floor or surface of any premises or property in front of which the proposed stand is to be located. Such application shall include a request and agreement on the part of the applicant that the City prepare, mark and maintain such location for use as a taxicab stand at the applicant's expense, such costs to be paid by the applicant immediately upon being billed therefor by the City. Such application shall be reviewed by the Director pursuant to this section.~~

~~(I) Suspension and Revocation Procedures.~~

~~(1) Temporary Suspension by the Director.~~

~~(a) The Director shall have the authority to temporarily suspend any permit issued pursuant to the provisions of this section if an emergency situation exists wherein the immediate cessation of activities or operations under such permit is necessary to protect the public peace, health, safety or general welfare, including if a taxicab driver tests positive during a screening required by subsection (G) of this section. Such suspension shall become effective 24 hours after the permittee has received written notice of intent to suspend and the grounds therefor. Prior to imposition of any suspension, the permittee may appear before the Director and present any information concerning the proposed suspension. Following the 24-hour time period, the Director may impose a temporary suspension for a period not to exceed 60 days pending a hearing before the City Council. Such hearing shall be scheduled by the City Clerk pursuant to this section.~~

~~(b) If a taxicab driver's permit is proposed to be temporarily suspended by the Director, the taxicab permittee shall be notified of the proposed temporary suspension and shall be sent copies of all hearing notices which are sent to the taxicab driver.~~

~~(2) Suspension or Revocation Hearing by the City Council. Whenever a permit granted or issued under the provisions of this section is temporarily suspended by the Director, a written report of such action or recommended action shall be filed by the Director with the City Clerk for submission to the City Council. Concurrently, a copy of such report shall be mailed to the permittee, together with a notice that the matter will be set for hearing by the City Council at its next regular meeting, giving the date, time and place of such meeting. The City Clerk shall set the matter for hearing by the City Council at its next regular meeting, and the City Council shall, at such hearing or continuance thereof, hear such evidence as may be offered, and, in its discretion, affirm, modify or reverse the action taken or recommended. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing in accordance with PMC 2.08.090.~~

~~(3) Surrender of Permit. If the City Council finds that sufficient justification exists for the suspension or revocation of a permit, then the City Council may suspend or revoke such permit. The permit shall forthwith be surrendered to the Director, and the operation of any taxicab or taxicabs covered by such permit shall thereupon cease and be unlawful.~~

~~(J) Authority to Inspect and Order Repairs. The Sheriff's Department or the Director of Neighborhood Services may order any person owning or operating a taxicab which is unsuitable or unsafe for taxicab service, including any condition specified in subsection (H)(10) of this section, to remove such taxicab from service. Such order shall be in writing. The vehicle shall not be operated on the streets of the City unless and until satisfactory proof is presented to the Sheriff or the Director of Neighborhood Services that the taxicab is safe and complies with the requirements of this section.~~

~~(K) Penalties.~~

~~(1) The fine for operating a taxicab in the City of Palmdale without a permit from the city or county in which the taxicab company is substantially located shall be $5,000.~~

~~(2) Any other violation of this section shall be punished pursuant to Chapter 1.12 PMC. (Ord. 1605 §§ 15, 16, 2023; Ord. 1518 § 1, 2019; Ord. U-1030 §§ 19 – 24, 1993; Ord. 898 § 2, 1990)~~

~~5.04.670 Tobacco/smoking product retailer.~~

~~(A) Definitions. For the purpose of this section, the following terms shall have the following meanings:~~

~~(1) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, corporate or other entities which have some or all of the same directors and/or principals, or any sale for which a significant purpose is avoiding the effect of the violations of this section, is not an arm's length transaction.~~

~~(2) "Drug paraphernalia" shall have the definition set forth in California Health and Safety Code Sections 11014.5 and 11364.5, as those sections may be amended from time to time.~~

~~(3) "Electronic cigarette" shall mean an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. "Electronic cigarette" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.~~

~~(4) "Flavored electronic cigarette product" shall mean any product used in an electronic cigarette, containing, as a constituent or additive, an artificial or natural flavor or an herb or spice, including but not limited to tobacco, mint, menthol, spearmint, wintergreen, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the product, or the smoke or vapor produced by the product.~~

~~(5) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10 percent or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.~~

~~(6) "Self-service display" means the open display or storage of tobacco products, smoking products or tobacco/smoking paraphernalia in a manner that is physically accessible in any way to the general public without assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.~~

~~(7) "Smoking product" means any substance produced or sold to be used for smoking, ingestion or consumption in cigarettes, electronic cigarettes, cigars, pipes, hookahs, or other similar objects.~~

~~(8) "Tobacco product" means (a) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and (b) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.~~

~~(9) "Tobacco/smoking paraphernalia" means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other instrument or paraphernalia designed for the smoking, preparation, storing, ingestion or consumption of tobacco and other smoking products.~~

~~(10) "Tobacco/smoking product retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, in public view, tobacco, tobacco/smoking products or tobacco/smoking paraphernalia. Any person who distributes free or low cost samples of tobacco products, smoking products or tobacco/smoking paraphernalia shall be deemed to be a tobacco/smoking product retailer under this chapter. "Tobacco/smoking product retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco or smoking product, or tobacco or smoking paraphernalia sold, offered for sale, exchanged or offered for exchange.~~

~~(11) "Vending machine" as used in this section shall mean a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.~~

~~(12) "Youth decoy" means a person under the age of 18 who is used by the Los Angeles County Sheriff's Department or any City official or employee authorized to enforce provisions of this chapter to conduct random on-site sting investigations to determine compliance with tobacco retailing laws.~~

~~(B) Permits Required.~~

~~(1) Any person intending to act as a tobacco/smoking product retailer shall, within one year of the effective date of the ordinance codified in this section, obtain a tobacco/smoking product retailer permit for each location at which tobacco/smoking~~

~~product retailing is to occur. This applies to all existing and future tobacco/smoking product retailers in the City.~~

~~(2) It shall be unlawful for any person to act as a tobacco/smoking product retailer in the City without first obtaining and maintaining a valid tobacco/smoking product retailer's permit pursuant to this section for each location at which that activity is to occur.~~

~~(3) The sale of tobacco/smoking products or tobacco/smoking paraphernalia from other than a fixed location, including but not limited to tobacco/smoking product retailing by persons on foot or from vehicles, is prohibited and no permit shall be issued under this section to any such activity.~~

~~(4) Nothing in this section shall be construed to grant any person obtaining and maintaining a tobacco/smoking product retailer's permit any status or right other than the limited conditional privilege to act as a tobacco/smoking product retailer at the location in the City identified in the permit application and/or on the face of the permit. Nothing in this chapter is intended to be construed to render inapplicable, supersede, or affect any other provision of applicable law, including but not limited to any provision of this code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5.~~

~~(5) No permit shall be issued to authorize a tobacco/smoking product retailer at a location that is permitted under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on sale" license issued by the California Department of Alcoholic Beverage Control) and no permit shall issue to authorize a tobacco/smoking product retailer at any location offering food for sale for consumption by guests on the premises.~~

~~(C) Applications. In addition to the information requirement by PMC 5.04.140, the application for a tobacco/smoking product retailer permit shall contain the following information:~~

~~(1) Proof that the location for which a tobacco/smoking product retailer permit is sought has been issued a valid state tobacco/smoking product retailer's permit by the California Board of Equalization.~~

~~(2) A signed affirmation by each proprietor that the proprietor is informed of the laws affecting tobacco/smoking product retailer permits. No proprietor may rely on the issuance of a permit as a determination by the City that the proprietor has complied with all laws applicable to tobacco/smoking product retailing.~~

~~(3) Whether or not any proprietor or any agent admitted violating or has been found to have violated this section and, if so, the dates and locations of all such violations within the previous five years.~~

~~(4) Each permit application must be accompanied by the required permit fee, established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the total cost of both permit administration and permit enforcement, including, for example, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the costs of the regulatory program authorized by this section. Fees are nonrefundable except as may be required by law.~~

~~(5) Such other information as the Director deems necessary for the administration or enforcement of this section as specified on the application form required by this section.~~

~~(6) A permitted tobacco/smoking product retailer shall inform the Director in writing of any change in the information submitted on an application for a tobacco/smoking product retailer's permit within 10 business days of a change.~~

~~(7) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the law's exemptions.~~

~~(8) A statement signed by each proprietor that no drug paraphernalia is or will be sold at the business seeking the permit.~~

~~(D) Issuance and Renewal of Permit.~~

~~(1) Except as otherwise provided herein, upon receipt of a complete application for a tobacco/smoking product retailer's permit and the payment of the applicable permit fee, the Director shall issue a permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:~~

~~(a) One or more of the bases for denial listed in PMC 5.04.200 exists.~~

~~(b) The application seeks authorization for tobacco/smoking product retailing that is prohibited pursuant to this section (e.g., mobile vending), that is unlawful pursuant to this code, including without limitation the zoning ordinance, building code, business license ordinance, or that is unlawful pursuant to any other law.~~

~~(c) The application seeks authorization for tobacco/smoking product retailing for a proprietor to whom this section prohibits a permit to be issued.~~

~~(d) Suspension or revocation proceedings have been initiated by any local, state or federal agency for violations of local, state or federal tobacco control laws within the preceding 60-day period.~~

~~(2) Notwithstanding any other provision of this section, prior violations at a location shall continue to be counted against a location and permit ineligibility periods shall continue to apply to a location unless:~~

~~(a) The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and~~
~~(b) The new proprietor provides the City with clear and convincing evidence that the new proprietor has acquired the location in an arm's length transaction.~~

~~(3) Every permit issued under this chapter shall be posted in accordance with PMC 5.04.100.~~

~~(4) A tobacco/smoking product retailer's permit is valid only for the location for which it has been issued and may not be transferred from one person to another or from one location to another.~~

~~(5) The duration of a tobacco/smoking product retailer permit shall be consistent with the provisions of PMC 5.04.230 and shall be renewed consistent with the provisions of PMC 5.04.250 except that any permit that is suspended, has been permanently revoked, or is subject to suspension or revocation proceedings shall not be renewed.~~

~~(6) A tobacco/smoking product retailer permit which is not timely renewed pursuant to PMC 5.04.250 is an expired permit. The tobacco/smoking product retailer shall not engage in tobacco/smoking product retailing at the permitted location until a new permit has been issued for that location.~~

~~(7) A denial by the Director of a tobacco/smoking product retailer's permit may be appealed pursuant to PMC 5.04.340. An appeal shall stay all proceedings in furtherance of the appealed action.~~

~~(8) A valid City business license is required before a tobacco/smoking product retailer's permit may be issued.~~

~~(E) Positive Identification Required. No person engaged in tobacco/smoking product retailing shall sell or transfer a tobacco or smoking product or tobacco/smoking paraphernalia to another person who appears to be under the age of 27 years, without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco or smoking product or tobacco/smoking paraphernalia.~~

~~(F) Minimum Age to Sell Tobacco Products. No tobacco/smoking product retailer shall permit any person who is younger than 18 years of age to engage or participate in the sale of tobacco or smoking products or tobacco/smoking paraphernalia.~~

~~(G) Compliance Monitoring and Enforcement.~~

~~(1) Compliance with this section shall be monitored by any City official or employee authorized to enforce provisions of this chapter or this code. Compliance checks shall determine, at a minimum, if the tobacco/smoking product retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco/smoking product retailing. Nothing in this subsection shall create a right of action in any permit or other person against the City or its agents.~~

~~(2) Youth decoys may be utilized during enforcement of this chapter. The City shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of such person's age (herein "youth decoy") if the potential violation occurs when the youth decoy is participating in a compliance check supervised by any City official or employee authorized to enforce provisions of this chapter or this code.~~

~~(H) Permit Violations and Penalties.~~

~~(1) It shall be a violation of this section for a permittee, or his/her agents or employees, to violate any federal, state, or local law or regulation, including any provision of this chapter, applicable to tobacco or smoking products, tobacco/smoking paraphernalia or tobacco/smoking product retailing.~~

~~(2) Tobacco/smoking product retailing by means of a self-service display is prohibited.~~

~~(3) It shall be a violation of this section for a permittee or any permittee's agents or employees to violate any local, state or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code Section 11364.7.~~

~~(4) (a) It shall be a violation of this section for any tobacco retailer or any of permittee's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette product.~~

~~(b) There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored electronic cigarette products, including but not limited to individual flavored electronic cigarette products, packages of flavored electronic cigarette products, or any combination thereof, possesses such flavored electronic cigarette products with intent to sell or offer for sale.~~

~~(5) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this section shall constitute a violation.~~
~~(6) Failure to prominently display the tobacco/smoking product retailer permit in a publicly visible location at the permitted premises shall constitute a violation.~~

~~(7) The failure of the permittee to allow any law enforcement service, the Director, or any authorized City official to conduct unscheduled inspections of the premises of the business for the purpose of ensuring compliance with any federal, state, or local tobacco law or regulation, including any provision of this chapter, at any time the business is open for business shall constitute a violation.~~

~~(8) Any continuing violation shall constitute a separate offense for each day of the violation.~~

~~(9) Violations of this chapter are hereby declared to be public nuisances.~~

~~(10) Violations of this chapter are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.~~

~~(11) In addition to other remedies provided by this chapter or by other law, any violation of this section may be remedied by a civil action brought by the City Attorney in the name of the City, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and suits for injunctive relief.~~

~~(I) Revocation of Permit.~~

~~(1) In addition to any other penalty authorized by law, a tobacco/smoking product retailer's permit may be revoked by the City Council in accordance with PMC 5.04.280 through 5.04.300.~~

~~(2) Upon a finding by the City Council of a first violation of any provision of this chapter within any five-year period the City shall:~~

~~(a) Issue a written warning to the permittee.~~

~~(b) Advise the permittee of the penalties for further violations of this section.~~

~~(c) Require the permittee to provide documentation to the City that all employees engaged in the retail sales of tobacco or smoking products and/or tobacco/smoking paraphernalia have received training in a City-approved program within 60 days after the warning, or such other time as shall be set by the Director of Planning.~~

~~(d) Revoke said tobacco/smoking product retailer's permit for 90 days.~~

~~(3) Upon a finding by the City of a second permit violation of any provision of this chapter, within any five-year period, the tobacco/smoking product retailer's permit may be revoked for up to one year.~~

~~(4) Upon finding by the City of a third permit violation of any provision of this section, within any five-year period, the tobacco/smoking product retailer's permit may be permanently revoked.~~

~~(5) A tobacco/smoking product retailer's permit may be revoked by the City Council if one of the following conditions exist:~~

~~(a) One or more of the grounds for denial listed in PMC 5.04.200 existed before the permit was issued; or~~

~~(b) A permittee is convicted of a misdemeanor or felony violation of any federal, state, or local tobacco law or regulation, including any provision of this section, or in a different legal proceeding has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in this section.~~

~~(6) A tobacco/smoking product retailer whose permit has been revoked may not apply for a new tobacco/smoking product retailer's permit until 30 days prior to the expiration of the revocation period.~~

~~(7) During any period of permit revocation, the tobacco/smoking product retailer must remove from public view all tobacco or smoking products, tobacco/smoking paraphernalia and tobacco-related advertising. Failure to do so may be considered a subsequent violation.~~

~~(8) A decision of the City Council to revoke a permit is final.~~

~~(J) Tobacco Retailing without a Permit.~~

~~(1) In addition to any other penalty authorized by law, if the Director finds that any person has engaged in tobacco/smoking product retailing at any location without a valid tobacco/smoking product retailer's permit, either directly or through the person's agent or employees, the person shall be ineligible to apply for or be issued a tobacco/smoking product retailer's permit for that location as follows:~~

~~(a) After the first violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until 120 days have passed from the date of the violation.~~

~~(b) After the second violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until six months have passed from the date of the violation.~~

~~(c) After the third violation of this section at a location within any 18-month period, no new permit may issue for the person at the location until one year has passed from the date of the violation.~~

~~(2) The display of any advertisement relating to tobacco or smoking products or tobacco/smoking paraphernalia that promotes the sale or distribution of such products from the tobacco/smoking products retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location without first obtaining and maintaining a valid tobacco/smoking products retailer's permit pursuant to this section for each location at which the advertisement is displayed is prohibited.~~

~~(3) Tobacco or smoking products and tobacco/smoking paraphernalia offered for sale or exchange in violation of this section are subject to seizure by any City official or employee authorized to enforce provisions of this chapter or this code and shall be forfeited after the permittee and any other owner of the tobacco or smoking products or tobacco/smoking paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco or smoking products or tobacco/smoking paraphernalia were not offered for sale or exchange in violation of this section. The decision by law enforcement services may be appealed pursuant to the procedures set forth in PMC 5.04.340. Forfeited tobacco or smoking products and tobacco/smoking paraphernalia shall be destroyed after the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.~~

~~(4) For the purposes of the civil remedies provided in this section, whichever of the following is greater shall constitute a separate violation of this section:~~

~~(a) Each day on which a tobacco or smoking product or tobacco/smoking paraphernalia is offered for sale in violation of this section; or~~

~~(b) Each individual retail tobacco or smoking product and each individual retail item of tobacco/smoking paraphernalia that is distributed, sold, or offered for sale in violation of this section. (Ord. 1535 §§ 1—3, 2019; Ord. 1384 § 9, 2010)~~

~~**5.04.680 Tow truck.**~~

~~(A) Definition. For purposes of this section, the following term shall have the following meaning:~~

~~"Tow truck" means a motor vehicle which has been altered or designed and equipped to tow another motor vehicle by means of a crane, hoist, tow bar, tow line or dolly.~~

~~(B) Exemptions. The provisions of this section shall not apply to tow trucks or vehicles licensed pursuant to California Vehicle Code Section 11500 et seq. and California Business and Professions Code Section 7500 et seq.~~

~~(C) Application Information. In addition to the information set forth in PMC 5.04.140, an application for a tow truck service operator's permit shall include the following information:~~

~~(1) A map of the district, area or territory to be served by the tow truck service;~~

~~(2) A schedule of rates proposed to be charged in those areas of the City which the applicant proposes to service; and~~

~~(3) A description of the location and the operational facilities of the applicant.~~

~~(D) Operating Requirements.~~

~~(1) Service Records to Be Kept. A tow truck service operator shall maintain the following records for each service order:~~

~~(a) Location where tow service requested;~~

~~(b) Date and time request made;~~

~~(c) Description of vehicle towed;~~

~~(d) Location to which vehicle was towed;~~

~~(e) Identification of dispatcher;~~

~~(f) Identification of driver; and~~

~~(g) Time of dispatch.~~

~~(2) Inspection. Such records shall be available for inspection by the Director and the Sheriff for a period of at least six months.~~

~~(3) Driver's License Requirements. A tow truck service operator shall not allow any person to operate a tow truck authorized under its permit unless such driver has, in his or her possession, a valid driver's license issued by the California Department of Motor Vehicles.~~

~~(4) Insurance Requirements. The Director shall not issue a tow truck service operator's permit until the applicant has filed a policy of liability insurance pursuant to PMC 5.04.240 covering every tow truck to be operated pursuant to the operator's permit. The policy of liability insurance shall be in not less than the following amounts:~~

~~(a) One hundred thousand dollars for death or injury to any one person in any one accident or occurrence;~~

~~(b) Three hundred thousand dollars for death or injury to two or more persons in any one accident or occurrence;~~

~~(c) Fifty thousand dollars for damages to property of others.~~

~~(5) Indemnification. Every operator permitted pursuant to this section shall execute an indemnification agreement pursuant to PMC 5.04.240.~~

~~(6) Tow Truck Facility Security. If the tow truck service provides storage for towed vehicles, the operator shall provide security for such vehicles during all business hours.~~

~~(7) Locking of Vehicles. If the tow truck service provides storage of towed vehicles, the operator shall lock each ignition, remove the key, and place the key in a safe place.~~

~~(8) Sign Requirements.~~

~~(a) The operator shall install and maintain a sign on the business premises, plainly visible from the street, showing the operator's name, the address of the business, the time when the premises are closed and the towing and storage fees, if any.~~

~~(b) All signs shall be installed pursuant to this section in compliance with this code.~~

~~(9) Rates Charged. A copy of the rates charged for utilizing a tow truck's services shall be posted or carried in each tow truck. (Ord. 1384 § 10, 2010; Ord. 898 § 2, 1990. Formerly 5.04.670)~~

8.04.520.A

(A) All persons concerned in the commission of any violation of the provisions of this chapter, whether it be misdemeanor, infraction or administrative violation subject to administrative penalties, and whether they directly commit the act constituting the offense, or own property that the violation occurs on, or aid and abet in its commission, or, being present, are spectators and encourage its commission, or, not being present, have advised and encouraged its commission, or knowingly allow its commission on property owned by such person, and all persons counseling, advising, or encouraging children under the age of 16 years, or mentally impaired persons, to commit any offense, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any offense, or who, by threats, menaces, command, or coercion, compel another to commit any offense, are principals in any offense so committed and are guilty of and responsible for any offense so committed.

8.24.210 Vending

(A) Vending is allowed in City parks subject to the following regulations:

(1) All sidewalk vendors must comply with the applicable regulations is PMC ~~5.04.590~~5.04.460;

8.36.050 Conditions Constituting a Nuisance

(D) Nuisances Affecting Sanitation and Blight.

(1) Outdoor storage, so as to be visible at ground level from a public street or from adjoining property, as a part of a continuing practice, of any of the following items:

(b) Abandoned, inoperative, unregistered, wrecked or dismantled autos, trucks, trailers, motorcycles, camper boats or other recreational vehicles;

(3) Property that repeatedly has been the situs of nuisance activity, including but not limited to: disturbing the peace, illegal drug activity, public drunkenness, harassment of passersby, illegal gambling, prostitution, sale of stolen goods, acts of violence, public urination, acts of lewd conduct, unreasonably loud noise, or excessive littering; ~~and~~

(F) Nuisances Caused By Vehicles.

(2) Parking, storing or keeping of any recreational vehicle, trailer, boat, or camper within that area of a residential lot customarily considered to be the front yard. The front yard area does not include the driveway. For purposes of this subsection only, the driveway shall be limited to:

(8) Inoperable, unregistered, or abandoned motor vehicles stored for unreasonable periods on the premises and causing depreciation of nearby property values;

Section 8.40.015 Definitions

(B) Hazardous code violations, including any one or more of the following:

(6) Firewalls damaged or not maintained.

(C) Failure to post current and accurate emergency contact information.

"New construction" means construction of a property that was completed within the last five years of that property being subject to Section 8.40.020's registration requirement.

"Owner" means the person or entity identified and listed as having title to the residential rental unit by the latest property tax assessment roll maintained by the Los Angeles County Assessor.

"Residential rental unit" means a rented or leased ~~single-family residential building or a rented or leased residential dwelling unit within a single-family or multiresidential building.~~dwelling, including but not limited to Primary Dwelling, Single-Family Dwelling, Multi-Family Dwelling or Multi-Family Residential, an Accessory Dwelling Unit, Junior Accessory Dwelling Unit, or any other rented or leased property, or portion thereof, for habitation, regardless if it is owner occupied as well, including but not limited to mobile homes situated on private land, rooming houses, boarding houses and single room occupancies.

8.40.030 Inspections

All rental properties shall be inspected for compliance with the City of Palmdale housing and property maintenance standards. The owner shall ~~provide access for inspection within 10 working days of the Building Official's request. The Building Official in his discretion may require inspections by other City departments and/or Los Angeles County enforcement agencies, including, but not limited to, the County Health Department and Fire Department~~schedule an inspection with the Building and Safety Department within 60 days of the Rental Registration completion and shall provide access to the complete property for the inspection at the scheduled time. Additionally, the owner shall provide access to the complete property at any other time within 10 working days of the Building Official's request. The Building Official at his discretion may require inspections by other City departments and/or Los Angeles County and/or California State enforcing agencies, including, but not limited to, the Los Angeles County Health Department and Los Angeles County Fire Department.

It shall be the owner's responsibility to reschedule an inspection for work performed to remedy any violations as set forth in 8.04.200 SECTION 103 - Violations and Penalties, in the Palmdale Municipal Code within 30 days of a correction notice from the Building Officials Agent. Failure to reschedule within 30 days will result in a cancellation of the rental registration.

8.40.035 Certificate of compliance

(B) A certificate of compliance shall be issued for all residential rental units upon completion of the following:

(6) A valid City business license has been issued for a property ~~with four or more residential rental units~~to the property owner for the residential rental units covered under the certificate of compliance.

Single-family or detached

Violations, but no major violations~~, found within preceding year; all violation corrections completed within 30 days after notice by Building Official~~or failure to register before expiration of the certification of compliance, found within preceding year; all violation corrections completed within 30 days after notice by Building Official.

8.40.040 Re-registration and certificate of compliance renewal

The owner of a residential rental unit shall apply and pay all required fees not less than 30 days prior to the scheduled expiration of the certificate of compliance. The owner of a residential rental unit property shall re-register and meet all requirements and pay all fees as for a new certificate. Failure to re-register, meet all requirements, and pay all fees required for a new certificate prior to the scheduled expiration of the certificate of compliance will result in the removal of the option for a five-year certificate. Upon re-registration, inspection and the issuance of a new certificate of compliance, the Building Official in the exercise of his discretion may grant a frequency upgrade to extend the inspection frequency one level; however, if all of the following actions are taken and certified to, upon his approval and in the exercise of his discretion, the Building Official may grant a frequency upgrade to extend the inspection frequency two levels:

When ownership of a residential rental unit property changes:

(A) the new owner shall notify the Building Official within 60 days;

(B) any valid and current certificate of compliance for that residential rental unit under Section 8.40.035 shall automatically transfer from the old owner to the new owner unless the Building Official is not provided timely and proper notice pursuant to 8.40.060(A); and

(C) all required property postings under Section 8.40.035(B)(4) shall be updated.

9.04.040 Annoying and Harassing Contacts to City.

No person shall contact the City's employees, representatives, and agents, via telephone or other electronic communication with the intent to annoy or harass, including making repeated telephone calls, using obscene language or addressing another person in any way that is threatening, or making false or outlandish statements.

9.04.050 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.04.060 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to abatement procedures prescribed in PMC Chapter 8.36.

9.04.070 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030

Chapter 9.11

Public Urination and Deffacation

Sections:
9.11.010 Prohibition.
9.11.020 Enforcement.
9.11.030 Public Nuisance.
9.11.040 Penalties.

9.11.010 Prohibition.

It is unlawful for any person to urinate or defecate in a public place or publicly owned property other than a restroom, or in a place open to public view, or upon the private property of another without the consent of the owner or person in lawful possession.

9.11.020 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter.

9.11.030 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36. The City may enforce any violation of this Chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These

remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.11.040 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

9.12.020 ~~Drinking in public~~ Public Consumption of Liquor

~~No person shall drink any malt, spirituous or vinous liquor containing more than one-half of one percent of alcohol by volume upon any public street, alleyway, sidewalk or parkway, or in any public building, public lavatory, auto park, or lobby or entranceway to any building within the City. (Ord. 10 § 32, 1962)~~

(A) Drinking in Public. No person shall drink any alcoholic beverage upon any public street, alleyway, sidewalk or parkway, or in any public building, public lavatory, auto park, or lobby or entranceway to any building within the City.

(B) Possession of Open Container.

(1) No person who has in his or her possession any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, shall enter, be, or remain in any public area, including, but not limited to, any roadway, sidewalk, parking lot, or on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, or on any area immediately adjacent to the licensed and posted premises, or on the premises of, or immediately adjacent to, any business not licensed to sell or consume alcoholic beverages.

(2) As used in this Section, "posted premises" means those premises which are subject to licensure under any retail package off-sale alcoholic beverage license, the parking lot immediately adjacent to the licensed premises and any public sidewalk immediately adjacent to the licensed premises on which clearly visible notices indicate to the patrons of the licensee and parking lot and to persons on the public sidewalk, that the provisions of this Section are applicable. This Section does not apply to possession an alcoholic beverage on-site of a properly licensed facility in compliance with State law.

(C) Nothing in this Section prohibits drinking in public or having possession of an open container where the location of such acts is subject to a valid city approval for such acts, such as special event permit, where such actions have been expressly allowed by the City.

Article VIII. Public Nuisance

9.12.080 ~~Man dressing as woman~~ Penalties

~~Repealed by Ord. 1457. (Ord. 10 § 20, 1962)~~ Article V. Lewdness and Disorderly HousesViolations of any provision of this Article shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Article occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

9.12.190 Causing Public Nuisances While Under the Influence.

(A) Prohibition. It shall be unlawful for any person to cause a public nuisance while under the influence. A “public nuisance” shall have the meaning set forth in PMC section 8.36.050.

(B) As used in this Article, “under the influence” shall mean impairment, to any degree, of an individual's ability to perform the activity in question as a result of the use of alcohol, drugs, or a combination of both.

(C) Penalty. Violations of any provision of this Article shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Article occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

(D) Public Nuisance. Any violation of this Article shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36. The City may enforce any violation of this Article by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.16.050 Fighting in Public Prohibited.

It is unlawful for any person to engage in any physical fight, disorderly conduct, or altercation with any other person on any public property or upon the premises of another within the City, while in public view.

9.16.060 Fighting on Public Property Prohibited.
It is unlawful for any person to engage in any physical fight, disorderly conduct, or altercation with any other person on any public property or upon any public premise owned or operated by the City.
9.16.070 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.16.080 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to abatement procedures prescribed in PMC Chapter 8.36.

9.16.090 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030

9.24.040 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

Chapter 9.51 Aggressive Panhandling

Sections:
9.51.010 Purpose and Intent.

9.51.020 Definitions.
9.51.030 Prohibition Against Aggressive Panhandling.
9.51.040 Enforcement.
9.51.050 Public Nuisance.
9.51.060 Penalties.

9.51.010 Purpose and Intent.

(A) It is the intent of the council in enacting the ordinance codified in this Chapter to preserve and improve the quality of life for those in the City, and to protect the safety of the general public against certain abusive conduct of persons engaged in aggressive panhandling by imposing reasonable restrictions on aggressive, intrusive, or unsafe panhandling while respecting the constitutional rights of free speech for all citizens.
(B) This Chapter is not intended to, and does not, prohibit non-aggressive panhandling and is limited to aggressive panhandling on public property.

(C) Aggressive and intrusive panhandling includes unwanted physical contact of pedestrians and others or the intentional blocking of pedestrian and vehicular traffic. The City Council finds that an increase in aggressive panhandling in the City has become extremely disturbing and disruptive to residents and businesses, and contributes to the loss of access to and enjoyment of public places, and to an enhanced sense of fear, and disorder. Aggressive panhandling unquestionably threatens the public's safety and welfare. Aggressive panhandling also undermines the public's inherent right to use and enjoy public places without being accosted by or be in reasonable apprehension of persons demanding money or goods in a forceful manner. The actions of individuals engaged in aggressive panhandling likewise can create a climate of intimidation and anxiety among members of the public, who when confronted, reasonably and legitimately fear harm if they refuse to give in to the solicitations of individuals engaged in this type of conduct. Aggressive panhandling also reflects behaviors that are otherwise illegal, such as assaulting persons, and is unrelated to the content of speech, and these regulations are in no way intended to regulate in any manner the content of speech.

(D) Aggressive panhandling usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrians. Such activity often carries with it an implicit threat to both person and property.

(E) The City Council further finds that restricting aggressive panhandling on public property will provide a balance between the rights of panhandlers and the rights of persons who wish to decline or avoid such aggressive panhandlings and will help avoid

or diminish the threat of violence in such unwarranted and unavoidable confrontations while allowing all members of the public to peacefully utilize and enjoy public property.

(F) The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to very specific conduct occurring on public property and focused to serve a substantial governmental interest. Furthermore, in enacting this legislation, the City Council recognizes the inherent availability of warnings and alternative administrative and civil remedies which may be appropriate remedies for violations of this law.

9.51.020 Definitions.

As used in this Chapter, the terms listed below shall have the meaning assigned them:

(A) "Aggressive panhandling" means any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, if that conduct is likely to cause a reasonable person to:
(a) Fear bodily harm to oneself or to another, damage to or loss of property, or

(b) Otherwise be intimidated into giving money, goods, or other things of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact in the course of soliciting, asking or begging; or

(4) Persisting in closely following or approaching a person, after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the panhandler.

(B) "Bona fide charity" or "charity" means any social, religious, educational, sports, arts, or other similar bona fide non-profit organization not engaged in any criminal activity or enterprise for which financial donations are collected.

(C) "Panhandling" means to ask for or solicit money, property, or other favor, regardless of value.

(D) The definitions set forth in PMC Chapter 1.20 are also applicable to this Chapter.

9.51.030 Prohibition Against Aggressive Panhandling.

(A) It shall be unlawful for any person to engage in any aggressive panhandling on any public property, including any City park, City building, and public street, highway, sidewalk, or public right-of-way.

(B) This Chapter does not apply to any bona fide charity or person that engages in panhandling that is not aggressive, as defined in this Chapter.

(C) This Chapter does not apply to protected speech activities or other activity protected by law.

9.51.040 Enforcement.

The City is authorized to take such actions as may be required for enforcement of this Chapter. The City may enforce any violation of this chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.51.050 Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to all enforcement methods, abatement procedures, other remedies, and cost recovery as prescribed in PMC Chapter 8.36. The City may enforce any violation of this Chapter by any and all means available by law, including, but not limited to, civil enforcement through such means as a restraining order and nuisance abatement action for relief such as preliminary or permanent injunction, criminal enforcement, and administrative enforcement. These remedies are intended to be cumulative and may be used in conjunction with or in lieu of each other remedy.

9.51.060 Penalties.

Violations of any provision of this Chapter shall be punishable as set forth in Palmdale Municipal Code Title 1, Chapter 1.12. Each day that a violation of this Chapter occurs shall constitute a new and separate offense as provided in PMC section 1.12.030.

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC SAFETY DEPARTMENT AND ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT**

DISTRICT: **ALL**

SUBJECT: **ADOPT ORDINANCE NO. 1615, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING AMENDMENTS TO TITLE 12 OF THE PALMDALE MUNICIPAL CODE**

ISSUE

Introduction and adoption of Ordinance No. 1615, an Ordinance of the City Council of the City of Palmdale approving amendments to Title 12 of the Palmdale Municipal Code (PMC).

RECOMMENDATION

Staff recommends that the City Council:

1. Receive public testimony regarding Ordinance No. 1615;

2. Adopt Ordinance No. 1615 recommending City Council approval of various amendments to the PMC; and,

3. Adopt Resolution No. CC 2023-078 amending the City of Palmdale Master Schedule of Fees adopted by the City Council on June 21, 2023 (Resolution No. CC 2023-043) to update fines, adopt new fines, and delete certain fees.

BACKGROUND

This ordinance will add a chapter to the PMC related to restrictions on parking to facilitate street sweeping and amend PMC Chapter 12.30 Shopping Carts, related to shopping cart regulations.

Specifically, this ordinance will establish parking restrictions to facilitate street sweeping and define and establish the responsibilities of retail business owners and operators who provide shopping carts to their customers and their obligation to develop and submit an effective shopping cart nuisance abatement plan to the City for approval.

The outcome of this ordinance will be to establish a street sweeping program and provide greater efficiency for the City of Palmdale's ("City") code enforcement efforts related to shopping cart theft and abandonment.

DISCUSSION

The proposed amendments to the PMC impact Title 12 Streets, Sidewalks, and Public Spaces as follows:

PMC Chapter 12.30 Shopping Carts

The proposed amendments to Chapter 12.30 expand on guidelines for retailers to establish an effective shopping cart containment and retrieval plan.

PMC Chapter 12.36 Parking Restricted to Facilitate Street Sweeping

The proposed addition of PMC Chapter 12.36 will establish parking restrictions on City streets for limited periods on designated days to facilitate street sweeping to reduce risks of blocked gutters, flooding, and hazardous conditions. City staff will conduct outreach efforts to educate the community regarding the proposed modifications to Title 12 prior to implementing enforcement action.

The City of Palmdale Master Schedule of Fees will also be updated to coincide with the proposed changes to the PMC. Resolution No. CC 2023-078 establishes fine amounts and fees for shopping cart and street sweeping related infractions. In addition, certain outdated business license permit fees will be eliminated, or combined with other permit fees, to streamline the permit issuance process for businesses and staff. The revenues generated from the new and updated fee amounts should offset the revenue loss from the elimination of certain business license permit fees.

FISCAL IMPACT

It is anticipated that the fiscal impact will be neutral as a result of this action. Revenues will be generated from the new and updated fees and they are anticipated to offset the revenue loss from the elimination of certain business permit fees.

STRATEGIC PLAN

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community.

Prepared by:	Brenda Magaña, Planning Manager Mario Vallarta, Acting Community Compliance Manager
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

1. Ordinance No. 1615
2. Resolution No. CC 2023-078

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING AMENDMENTS TO TITLE 12 OF THE PALMDALE MUNICIPAL CODE

A. RECITALS

WHEREAS, the City of Palmdale (City) has filed applications that apply to the City and the City's sphere of influence, requesting various amendments to the Palmdale Municipal Code (PMC), to address street sweeping and restrictions on parking and shopping cart enforcement (hereinafter referred to as "Application");

WHEREAS, California State law requires that the regulations governing the use and development of lands within the municipal limits of a city be consistent with the adopted General Plan for that city;

WHEREAS, Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

WHEREAS, the City Council finds it necessary to update the PMC periodically to promote public health, safety, and welfare;

WHEREAS, the California Business & Professions Code Section 22435 et seq. sets forth procedures for the retrieval and abatement of shopping carts, and cost recovery for such abatement;

WHEREAS, the City Council finds it necessary to add select provisions relating to the City's authority to regulate and enforce parking restrictions to facilitate street sweeping as permitted under California Vehicle Code Section 22507 and 22507.6;

WHEREAS, California Vehicle Code Section 22507.6 provides that a local authority may, by ordinance or resolution, prohibit or restrict the parking or standing of vehicles on designated streets or highways, or portions thereof, for the purpose of street sweeping;

WHEREAS, California Vehicle Code Section 22507.6 further states that no ordinance or resolution relating to the parking or standing of commercial vehicles in a residential district shall be effective with respect to any commercial vehicle making pickups or deliveries of goods, wares, or merchandise from or to any building or structure located on the restricted street or highway, or for the purpose of delivering materials to be used in

the repair, alteration, remodeling, or reconstruction of any building or structure for which a building permit has previously been obtained;

WHEREAS, the City Council finds and declares that the City's retrieval of abandoned, stolen, wrecked and/or dismantled shopping carts is a blight on the City and a drain on resources;

WHEREAS, said amendments, adoptions, and/or deletions of the PMC are permitted by law, including the California Constitution, Government Code, and Civil Code; and,

WHEREAS, November 15, 2023, the City Council of the City of Palmdale conducted a duly noticed public hearing on the Application and concluded said hearing on that date. Evidence, both written and oral, was duly presented and considered by the City Council at the aforesaid public hearing, including but not limited to, the staff report, dated November 15, 2023.

B. ORDINANCE

THE CITY COUNCIL OF THE CITY OF PALMDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: The above recitals are true and correct and are incorporated herein.

SECTION 2: Section 12.30.010 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.010 Findings and purpose.

Many retail establishments provide shopping carts for the convenience of customers while shopping on the premises of such businesses. However, shopping carts removed from the premises of such businesses and left abandoned on public or private property throughout the City constitute a public nuisance and a potential hazard to the health and safety of the public. The proliferation of lost, stolen or abandoned shopping carts on public and private property causes blighting conditions in the community, results in the obstruction of free access to public and private sidewalks, streets, parking lots and other ways, interferes with pedestrian and vehicular traffic on public and private streets, and impedes emergency services. For the aforesaid reasons, such lost, stolen or abandoned shopping carts are declared to be a public nuisance which shall be subject to abatement in the manner set forth in this Chapter or in any other manner provided by law.

The purpose of this Chapter is to set forth regulations to ensure that reasonable measures are taken by the owners and operators of businesses which provide shopping carts for the convenience of customers to deter the removal of shopping carts from business

premises and parking lots, and provide for the prompt retrieval of lost, stolen or abandoned shopping carts, to complement and supplement provisions of state law, and to adopt local regulations to the extent not otherwise preempted by state statute.
Retail establishments owning any shopping carts are subject to the provisions of this Chapter.

SECTION 3: Section 12.30.020 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.020 Definitions.

"Abandoned shopping cart" means a shopping cart which is either (1) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (2) left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the owner. For purposes of this Chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either (1) is the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (2) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, or (3) is enforcement personnel retrieving, storing or disposing of the cart pursuant to the provisions of this Chapter.

"Cart owner" means every business or person who, in connection with the conduct of a retail establishment who owns, rightfully possesses, or makes any cart available to patrons and/or the public. This shall include the owner's agent or authorized representative.

"Contractor" means an authorized independent person approved by the City Council or their designee for the purpose of effecting the removal of abandoned shopping carts.

"Director" means the Manager of Planning of the City, or their designee.

"Effective containment program" means a system selected by the retail establishment that results in no more than five shopping carts being removed without the owner's consent from the business premises or parking area within the twelve-month period commencing with the issuance of a business registration and licensing or the renewal of the business

registration and licensing (minimum of five carts in a twelve-month time period). An effective containment program may include one or more of the following measures:

(1) Disabling devices on all shopping carts such as electronic or magnetic systems, which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts;
(2) Maintaining one or more security guards assigned the responsibility to deter or stop customers from removing shopping carts from the premises;
(3) Providing courtesy clerks to accompany customers out of the store and return shopping carts to the store; and/or,
(4) Any other measure approved by the Director in writing as a means to contain carts on the premises.

“Effective retrieval program” means no more than five abandoned shopping carts are collected by the City or its contractor within the City limits and returned to the retail establishment within the twelve-month period commencing with the issuance of a business registration and licensing or the renewal of the business registration and licensing (minimum of five carts in a twelve-month time period). There is a rebuttable presumption that a cart found abandoned somewhere off the premises of the cart’s owner was removed from the premises without the owner’s consent and that if the City or its contractor removes it and returns it to the retail establishment, the cart was abandoned for more than forty-eight hours.

“Effective shopping cart nuisance abatement” means the retail establishment’s ongoing activities to prevent the theft and abandonment of shopping carts from their parking area, combined with the retail establishment’s ongoing activity to retrieve any abandoned shopping cart owned by the retail establishment from public or private property within the City within forty-eight hours.

“Enforcement personnel” means any person authorized to issue citations as set forth in Palmdale Municipal Code Section 1.16.010.

“Identified cart” means a shopping cart that has a permanently affixed sign that identifies, in accordance with California Business and Professions Code Section 22435.1, the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the owner’s premises; notifies the public that the unauthorized removal of the cart from the cart owner’s premises or cart owner’s parking area or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart to the owner or retailer. If the cart owner operates more than one store, the sign shall identify the location of the store where the cart is used.

"Parking area" means a parking lot or other property provided by a retail establishment for use by a customer for parking an automobile or other vehicle. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the multistore complex or shopping center.

"Person" means a natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.

"Retail establishment" means any business located in the City which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, or is a private club or business, or is a membership store.

"Unidentified cart" means a shopping cart that is not an identified cart, as defined above.

SECTION 4: Section 12.30.030 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.030 Declaration of Public Nuisance.

Any violation of this Chapter shall constitute a public nuisance subject to abatement procedures prescribed herein and in PMC Chapter 8.36.

SECTION 5: Section 12.30.040 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.040 Mandatory shopping cart markings and signage.

(A) Each shopping cart used within the City shall be maintained as an identified cart and shall have a permanently affixed, and clearly visible, sign that:

(1) Identifies the owner of the cart or owner's retail establishment, or both;
(2) Lists the address of the owner of the retail establishment for shopping cart return and a telephone number at which a person may contact the owner to retrieve the shopping cart;

(3) Notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; and

(4) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law.

(B) It shall be the responsibility of each shopping cart owner to comply with Subsection (A) of this Section, and to continuously maintain, or cause to be maintained, the required sign in such a manner that the required information is accurate, current, and clearly legible.

(C) It shall be the responsibility of each shopping cart owner to provide signage on their premises in a conspicuous location near all customer entrances and exits and throughout the premises, including the parking area, in both English and Spanish, notifying cart users that removal of carts from the premises or parking area is prohibited by State law without the written consent of the retail establishment.

SECTION 6: Section 12.30.050 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.050 Unlawful removal or possession of shopping carts prohibited – Power to contract.

(A) Unlawful Possession. It is unlawful for any person other than a cart owner or its authorized representative to do any of the following acts:

(1) To remove or cause to be removed any cart from a retail establishment or a parking area without the prior written consent of the owner;

(2) To possess any cart that has been removed from a parking area without the prior written consent of the cart owner or retail establishment, with the intent to temporarily or permanently deprive the owner of possession of the cart;

(3) To alter, convert, or tamper with any cart, or remove any part or portion thereof, or to remove, obliterate, or alter any identification, including, but not limited to, any serial numbers, or to possess any cart that has been altered, converted, or tampered with or whose identification has been removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart without the prior written consent of the cart owner; or,

(4) To abandon or leave any cart, which has been removed from a business establishment or a parking facility, upon any public property or upon any private property that is not the premises of the retail establishment or the parking facility.

(B) This Section shall not apply to the owner of a shopping cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or a retailer to be in possession of the shopping cart or to remove the shopping cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in subsection (A) of this Section. For purposes of all provisions in this Chapter, any person removing a cart from the retail business or parking area with consent of the cart owner shall carry a copy of such written consent on their person.

(C) Engagement of Contractor. The City may, in accordance with the applicable City policies and as approved by City Council, cause the City to engage a contractor to retrieve abandoned carts and such contractor shall comply with the provisions of this chapter and applicable state law including, but not limited to, Business and Professions Code Section 22435.10 et seq.

(D) In any civil proceeding, any shopping cart which has a sign affixed to it pursuant to Section 12.30.040 shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.

(E) In any criminal proceeding, it may be inferred that any shopping cart which has a sign affixed to it pursuant to Section 12.30.040 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

SECTION 7: Section 12.30.060 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.060 Effective cart nuisance abatement program.

It is unlawful for any person owning a retail establishment located in the City where carts are available for customer use not to implement and maintain an effective cart nuisance abatement program. Effectiveness is measured by the performance of the retail establishment's effective cart nuisance abatement program in compliance with this Section. Any cart owner shall implement and use any reasonable means in any combination to: (i) prevent the removal or theft of their carts from their premises and parking area and subsequent abandonment of their carts within the City limits; and (ii) if such prevention measures are not one hundred percent effective, cart owners shall retrieve any and all their abandoned shopping carts from within the City boundaries within forty-eight hours.
(A) Elements of an Effective Cart Nuisance Abatement Program. Within the timeframes set forth in subsections 12.30.060(B) and (D) below, all retail establishments/cart owners must: (i) notify the Director that they own carts for the use of their customers on their premises; and (ii) submit a written plan for the implementation of an effective cart

nuisance abatement program. The program shall include, but is not limited to, the following:

(1) Either an effective containment program or an effective retrieval program as each is defined in Section 12.30.020, or both.

(2) If a retail establishment has a valid and operational contract with a contractor recognized by the City to retrieve abandoned shopping carts and return them to the retail establishment on an ongoing and regular basis of at least three times per week, then the owner is presumptively deemed to have an effective cart nuisance abatement program, which presumption may be rebutted if the cart retrieval contractor fails to meet the standards for “effectiveness” set forth in this Section. Nothing in this Section waives or limits compliance with the signage and cart marking mandates in Section 12.30.040.

(B) Submission of Plans for Implementing Effective Cart Nuisance Abatement Program. All retail establishments operating within the City limits shall submit, obtain approval from the City, and implement an effective cart nuisance abatement program.

(1) New or Relocated Retail Establishments. Each new retail establishment, and any existing retail establishment relocating to a different location within the City, shall submit a proposed plan for implementing an effective cart nuisance abatement program complying with the requirements of PMC 12.30.060(C) to the Director, and obtain approval thereof by the City, prior to providing any shopping carts to customers of the retail establishment. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Director unless accompanied by the processing fee established by the City Council.

(2) Existing Retail Establishments. Each existing retail establishment that otherwise does not already have an approved plan for effective cart nuisance abatement program, shall either (a) submit a proposed plan complying with the requirements of PMC 12.30.060(C) to the Director within 180 calendar days following the date of the most recent amendment of this Chapter or (b) submit a proposed plan complying with the requirements of PMC 12.30.060(C) to the Director in conjunction with the retail establishment’s business license renewal application submitted to the City pursuant to Section 3.44.240, whichever is sooner. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.

(C) The owner shall have the obligation to provide demonstrable evidence to the Director that the elements proposed will be effective. The proposed plan for an effective cart nuisance abatement program shall contain the following information:

(1) That the retail establishment owns carts for the use of their customers on their premises and parking areas;

(2) The address of the retail establishment and identity of associated parking areas utilized directly for its carts;

(3) A contact phone number at the retail establishment in Palmdale for the person or persons, or job title of the person, who will be responsible for accepting all carts retrieved by the City and returned to the retail establishment during its normal hours of business;

(4) The type, color and number of carts owned;

(5) The plan shall include provisions for the retrieval of abandoned shopping carts consistent with the provisions below:

(a) Retrieval Plan. The owner shall provide a plan for purposes of the retrieval of abandoned shopping carts. Such personnel may be either employees of the business or one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both.

(b) Retrieval Area. The owner shall provide a retrieval plan to ensure that all public streets within a minimum one and one-half mile radius of the premises of the retail establishment are patrolled not less often than every 48 hours, and all bus stops within a minimum one and one-half mile radius of the retail establishment are patrolled not less often than every 24 hours, and each abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found.

(6) Photographic proof of compliance with the signage and cart marking mandates in Section 12.30.040;

(7) A plan for storing shopping carts during non-business hours to prevent theft while the retail establishment is closed;

(8) A narrative description, and any plans, photographs or other evidence demonstrating the implementation of an effective cart nuisance abatement program as defined in Section 12.30.020 and in compliance with this Section.

(D) Director Review and Approval. The Director shall review the plan for the proposed effective cart nuisance abatement program and approve or deny the plan within 30 days of its receipt. If the program plan is approved, the cart owner/retail establishment shall implement the approved effective cart nuisance abatement program within 30 days from the date of approval. If the plan is incomplete, the Director shall notify the cart owner in writing to revise the plan and resubmit it within 30 days of Director's notice. The Director may deny a plan for a proposed effective cart nuisance abatement program based upon one or more of the following grounds:

(1) Implementation of the plan violates any provision of the building, zoning, health, safety, fire, police or other provision of this code or any county, state or federal law that substantially affects public health, welfare, or safety;

(2) The plan fails to include all of the information required by this Chapter;

(3) The proposed plan is insufficient or inadequate to qualify as an effective cart nuisance abatement program as defined in Section 12.30.020 and in compliance with this Section;

(4) The plan is insufficient or inadequate to ensure the prompt retrieval of shopping carts removed from the premises;

(5) The proposed program fails to address any special or unique conditions to the geographical location of the business establishment or parking facility as such conditions relate to cart retention and theft removal prevention;

(6) Implementation of the proposed program would violate a term or condition of any agreement between the City on one hand, and the retail establishment, or owner of the parking area, or cart owner, on the other hand; or,

(7) The owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the plan, or in any amendment or report or other information required to be made.

(E) The decision of the Director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. If the plan is rejected as incomplete or inadequate, the Director shall indicate areas of incompleteness or inadequacy, and the

owner shall have an additional 30 days in which to resubmit a complete and adequate plan. The decision of the Director is final.

(F) Noncompliance. A cart owner who fails to submit an effective cart nuisance abatement program, or whose program is denied, or whose program is approved but who then does not comply with the terms of the approved program, shall be subject to enforcement of these requirements as set forth in Section 12.30.120. Each day during which a retail establishment/cart owner has not complied with the provisions of this Chapter shall constitute a separate violation.

SECTION 8: Section 12.30.070 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.070 Modification, Revocation, and Renewal of Effective Cart Nuisance Abatement Plan.

For purpose of enforcing this Chapter, enforcement personnel may enter public or private property as allowed by law, or with the consent of the property owner, or by warrant, to examine a cart or to cause the removal of such cart if authorized pursuant to this Chapter.

(A) Modification. Amendments by Owner. The owner of any retail establishment which has an approved effective cart nuisance abatement plan conforming to the requirements of this Chapter may, at any time, submit a proposed amendment to the approved plan, which amendment shall be processed in accordance with the procedure provided for a proposed effective cart nuisance abatement plan as set forth in Section 12.30.060. Each proposed amendment shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed amendment shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.

(B) Revocation or Amendment by City. An approved effective cart nuisance abatement plan may be revoked by the Director, or modified in lieu of revocation in the exercise of the Director's sound discretion, upon any of the following grounds:

(1) The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of the approved effective cart nuisance abatement plan and has failed to correct the violation(s) for a period of at least 15 calendar days following the date of receipt of written notice of such violation(s) from the City; or

(2) The owner of any retail establishment with an approved effective cart nuisance abatement plan is operating, or is permitting the operation of, the retail establishment in violation of one or more of the requirements of this Chapter and has failed to correct the violation(s) for a period of at least 15 calendar days following the date of receipt of written notice of such violation(s) from the City; or

(3) The effective cart nuisance abatement plan, as approved, is inadequate to prevent the removal of shopping carts from the premises of the retail establishment, or reasonably ensure the prompt retrieval of abandoned shopping carts; or

(4) The owner of any retail establishment knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the effective cart nuisance abatement plan, or in any amendment or in any other required document.

(C) Renewal. Prior to the expiration of an approved effective cart nuisance abatement plan, the owner of any retail establishment holding an approved effective cart nuisance abatement plan shall submit to the Director a request for renewal. Each request for renewal shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No request for renewal shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.

(1) The request for renewal shall:

(a) Include a copy of the approved effective cart nuisance abatement plan; and,

(b) Identify any proposed amendments to the approved effective cart nuisance abatement plan.

(2) Requests for renewal shall be processed in accordance with Section 12.30.060(D) and the decision of the Director shall be made in accordance with Section 12.30.060(E).

(3) A renewed effective cart nuisance abatement plan shall be valid for a period of one year or until the date required for renewal of the retail establishment's existing business license. Each year, a renewal application must be submitted with the retail establishment's business license renewal application submitted to the City pursuant to Section 3.44.240.

SECTION 9: Section 12.30.080 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.080 Abandoned shopping carts – Abatement and storage.

(A) Removal. Enforcement personnel shall have the authority to remove any abandoned cart on public or private property, other than from the property of the cart owner, under the following conditions:

(1) Identified Carts. If the abandoned cart is an identified cart, removal may occur three business days after enforcement personnel gives the cart owner actual notice of the cart's discovery and location. A cart owner is deemed to have actual

notice three days after the deposit of written notice in the United States mail, posted first-class to the address indicated on the cart or the cart owner's last known address. If actual notice is provided by telephone, enforcement personnel shall maintain a record of the time, date, and name of the person notified.

(2) Unidentified Carts. If the abandoned cart is an unidentified cart, but other information on the cart provides sufficient information as to the identification of the cart owner, removal may occur either after enforcement personnel notifies the owner by telephone of the cart's discovery and location and grants a reasonable period of time, not to exceed twenty-four hours, for the cart owner to retrieve such cart, or immediately after reasonable efforts by enforcement personnel to notify the owner by telephone have failed. Enforcement personnel shall maintain a record of the time, date, and name of the person notified or attempted to be notified. If the owner cannot be determined from information on the cart, the cart shall be deemed an "unidentified cart" subject to Section 12.30.090.

(B) Storage. Any abandoned cart removed from public or private property by enforcement personnel shall be stored for thirty days at a location designated by the Director, which is reasonably convenient to the cart owner and open for business at least six hours of each business day.

(C) Fees for Actual Costs Payable to City. Any abandoned cart removed from public or private property and stored pursuant to this Section shall be released to the lawful cart owner if claimed within thirty days after such removal and upon payment of a redemption fee. The redemption fee for the removal and storage of any abandoned cart under this Section shall be established by City Council resolution and shall cover the actual costs of removal, storage, and related administrative procedures. The schedule for such fees shall remain on file and be available in the office of the Director and the office of the City Clerk.

(D) Fines. In addition to any redemption fee for which a cart owner is liable, the owner shall also be liable for a fine in an amount established by resolution of the City Council for each occurrence in excess of three during any six-month period for failure to retrieve a cart in accordance with Section 12.30.090(A)(4). As used herein, an "occurrence" includes all of owner's carts impounded in accordance with this Chapter in a one-day period.

SECTION 10: Section 12.30.090 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.090 Option for immediate impoundment.

(A) Notwithstanding Section 12.30.080(A), enforcement personnel may impound an abandoned cart that otherwise meets the criteria set forth in Section 12.30.080(A) without complying with the three business day advance-notice requirement provided that each of the following is met:

(1) The cart owner of the abandoned cart is provided actual notice within twenty-four hours following the impound and that notice informs the cart owner as to the location where the cart may be claimed;
(2) Any cart so impounded shall be held at a location in compliance with Section 12.30.080(B);
(3) Any cart reclaimed by the cart owner within three business days following the date of actual notice as provided pursuant to this Section, shall be released and surrendered to the owner at no charge whatsoever, including the waiver of any redemption fees that would otherwise be applicable pursuant to Section 12.30.080(C); and,
(4) Any cart not reclaimed by the cart owner within three business days following the date of actual notice as provided pursuant to this Section, shall be subject to any applicable fee imposed pursuant to Section 12.30.080(C) commencing on the fourth business day following the date of notice but accruing from the date of retrieval and storage, and any applicable fine imposed pursuant to Section 12.30.080(D). Any cart reclaimed by the owner within three business days following the date of actual notice as provided pursuant to this Section, shall not be deemed an "occurrence" under Section 12.30.080(D).

(B) Any shopping cart involved in a violation of Section 12.30.050(A) is subject to immediate impoundment, and such impoundment shall follow the procedures provided in Section 12.30.090(A).

(C) Sale; Final Disposition. Any cart not reclaimed by the cart owner within thirty days of receipt following the date of actual notice as provided pursuant to this Section, may be sold or disposed of in accordance with Section 12.30.110.

SECTION 11: Section 12.30.100 of Title 12 of the Palmdale Municipal Code is hereby amended to read as follows:

12.30.100 Notice of violation on unidentified shopping carts.

Within ten days of the removal of an abandoned cart pursuant to this Chapter, enforcement personnel shall provide notice to any known owner of the cart by first-class mail at the address indicated on the cart or the cart owner's last known address.
The notice shall include the following information:
(i) date and location of removal of the cart from public or private property;
(ii) procedure for recovering such cart; and
(iii) last possible date such cart may be recovered. If the cart owner is unknown and not clearly identified on the cart, the cart shall be designated "unidentified." Enforcement personnel, for each unidentified cart, shall maintain a record containing the information above and a brief description of the cart.

SECTION 12: Section 12.30.110 is hereby added to Chapter 12.30 of Title 12 of the Palmdale Municipal Code, and is to read in its entirety as follows:

12.30.110 Final disposition of unclaimed shopping carts.

Thirty days after notice is given to the owner, or after any shopping cart is designated "unidentified" pursuant to Section 12.30.100, any abandoned cart not claimed may be sold at public auction or otherwise disposed of. Any proceeds derived from such auction or disposal shall be used to pay the costs of removal, storage, and related administrative procedures. Surplus proceeds derived from such auction or disposal shall be deposited in the general fund of the City.

SECTION 13: Section 12.30.120 is hereby added to Chapter 12.30 of Title 12 of the Palmdale Municipal Code, and is to read in its entirety as follows:

12.30.120 Enforcement.

For purpose of enforcing this Chapter, enforcement personnel may enter public or private property as allowed by law, or with the consent of the property owner, or by warrant, to examine a cart or to cause the removal of such cart if authorized pursuant to this chapter. Any person violating any of the provisions of this Chapter shall be punishable as set forth in PMC Title 1. Where the conduct constituting the violation is of a continuing nature, each day that the conduct continues shall be deemed a separate and distinct violation.
All retail establishment governed by this Chapter shall also comply with all other regulations and provisions in the City, including zoning and business licensing requirements.

SECTION 14: Chapter 12.36, Parking Restricted to Facilitate Street Sweeping is hereby added to Title 12 of the Palmdale Municipal Code, and is to be read in its entirety as follows:

Chapter 12.36

Parking Restricted to Facilitate Street Sweeping
12.36.010 Purpose and intent.
12.36.020 Definitions.
12.36.030 Authority.
12.36.040 Application.
12.36.050 Violation – Penalty.
12.36.010 Purpose and intent.

The purpose and intent of this Chapter is to restrict parking on City streets for limited periods on designated days to facilitate street sweeping to reduce risks of blocked gutters, flooding, and hazardous conditions associated with flooded public streets.

Uncollected debris or green waste left in City street gutters has the ability to enter into storm drains and clog or completely block gutters, which can result in flooding. Flooding has the capability to block streets and sidewalks, which can create hazardous conditions for pedestrians, cyclists, and motorists.

Further, the uncollected debris or green waste that enters the City's storm drains can affect the health of the environment and animal inhabitants that are located within the creeks, estuaries, and any surrounding bodies of water.

This Chapter is adopted pursuant to the authority granted by California Vehicle Code Sections 22507 and 22507.6, including any successor statutes, for the purpose of restricting parking to facilitate City street sweeping and related procedures.

The purpose of this Chapter is to restrict parking on City streets or portions thereof for the purpose of allowing unobstructed street sweeping.

12.36.020 Definitions.

As used in this Chapter, the terms listed below shall have the following meaning assigned to them:

(A) "Entrance" means the intersection of any street or streets comprising an area of restricted parking for street-sweeping purposes on the same day or days and hours with another street or highway not subject to such a parking restriction, or subject to parking restrictions on different days and hours.

(B) "Person" means any natural person, firm, partnership, association, corporation, or other entity of any kind or nature.

(C) "Vehicle" means a vehicle as defined in Section 670 of the California Vehicle Code as the Section now reads or may hereafter be amended.

(D) The definitions set forth in PMC Chapter 1.20 are also applicable to this Chapter.

12.36.030 Authority.

(A) Authority to regulate. The Director is authorized to do the following:

(1) Determine the dates and times it is necessary to restrict parking on City streets
(2) Determine the location for placement and install signs restricting parking on any street or portion thereof on which it is necessary to restrict parking.

(a) All restrictive parking signs shall be installed in a conspicuous place at each street and shall be no less than 17 inches by 22 inches in size, with

lettering not less than one inch in height, setting forth the day or days and hours parking is prohibited.

(3) Use discretional authority to determine and provide exemptions to persons for enforcement of this Chapter including but not limited to exemptions from these provisions for City projects previously approved by the City or if the provisions of this Chapter interfere with an existing special event permit or encroachment permit issued by the City. The Director at his/her sole discretion shall determine whether an exemption applies and if an exemption should be issued.

(B) Authority to enforce. All Enforcement Officers, any person or entity designated to do so by the Department, and by an entity or individual authorized pursuant to a written contract with the City to enforce parking regulations are authorized to enforce all provisions of this Chapter.

12.36.040 Application.

(A) Parking restricted where restrictive parking signs are posted.

(1) It is unlawful for any person to stop, stand, physically interfere, or park a vehicle on portions of City streets during the limited periods of time on designated days where authorized signs indicating restrictive parking has been posted on City streets or portions thereof in accordance with this Chapter.

(B) Exceptions. Section 12.36.040(A)(1) shall apply at all times and places within the City, except as follows:

(1) When operating in accordance with an exemption issued by the Director pursuant to Section 12.36.030(A)(3);
(2) When it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the direction of a peace officer or traffic control device;
(3) To any authorized emergency vehicles or a public utility vehicle utilized for responding to emergency incidents;
(4) When a more restrictive parking regulation has been established and adopted by the City Council;
(5) To any school bus designed and used or maintained for the transportation of any school pupil at or below the twelfth-grade level to or from a public or private school or to or from public or private school activities; and,
(6) When a commercial vehicle is making pickups or deliveries of goods, wares, or merchandise from or to any building or structure located on the restricted street or highway, or for the purpose of delivering materials to be used in the repair, alteration, remodeling, or reconstruction of any building or structure for which a building permit has previously been obtained.
(7) When street sweeping services are postponed by one day due to a holiday observed by street sweeping provider.

12.36.050 Violation – Penalty.

Pursuant to California Vehicle Code Section 40000.1, violations of any provision of this Chapter shall be punishable as an infraction pursuant to enforcement procedures set forth in PMC Title 1. Each day that a violation of this Chapter occurs shall constitute a new and separate offense.

SECTION 15: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, or invalid, or ineffective, provided the basic purposes of this Ordinance and the benefits to the City and the public are not substantially impaired.

SECTION 16: This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 17: The City Clerk shall certify to the adoption of this ordinance and shall cause this ordinance to be published or posted as required by law.

SECTION 18: The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

PASSED, APPROVED and **ADOPTED** this 15th day of November 2023.

Approved as to form:

_____
Laura Bettencourt, Mayor

ATTEST:

_____
William P. Curley, III, City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of the City of Palmdale, California, do hereby certify that the foregoing Ordinance was duly introduced, passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the _____ day of _____, 20___ effective on the ____ day of _____, 20___ by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____
Rochelle Scott, Acting City Clerk

EXHIBIT I

REDLINES

12.30.010 ~~Purpose – Declaration of nuisance~~ Findings and purpose

12.30.020 Definitions

~~(A) "Abandoned shopping cart" means a shopping cart which is either (1) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (2) left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the owner. For purposes of this chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either (1) is the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (2) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, or (3) is an enforcement officer retrieving, storing or disposing of the cart pursuant to the provisions of this chapter.~~

~~(B) "Cart control plan" means a written plan, developed in accordance with PMC 12.30.060 and approved by the City, to prevent customers from removing shopping carts from the premises of a retail establishment without authorization of the owner and to provide for the prompt retrieval of any abandoned shopping cart.~~

~~(C) "Director" means the Director of Planning of the City, or his or her designee.~~

~~(D) "Enforcement personnel" means any person authorized to issue citations as set forth in PMC 1.16.010.~~

~~(E) "Owner" means any owner, manager, or operator of any retail establishment.~~

~~(F) "Parking area" means a parking lot or other property provided by a retail establishment for the use of customers of such retail establishment for parking of customer vehicles. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the multistore complex or shopping center.~~

~~(G) "Planning Commission" means the Planning Commission of the City.~~

~~(H) "Premises" means any building, property or other area upon which any retail establishment business is conducted or operated in the City, including the parking area provided for customers of such retail establishment.~~

~~(I) "Retail establishment" means any business located in the City which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, or is a private club or business, or is a membership store.~~

~~(J) "Shopping cart" or "cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind. (Ord. 1336 § 1, 2008)~~

"Abandoned shopping cart" means a shopping cart which is either (1) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (2) left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the owner. For purposes of this Chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either (1) is the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (2) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, or (3) is enforcement personnel retrieving, storing or disposing of the cart pursuant to the provisions of this Chapter.

"Cart owner" means every business or person who, in connection with the conduct of a retail establishment who owns, rightfully possesses, or makes any cart available to patrons and/or the public. This shall include the owner's agent or authorized representative.

"Contractor" means an authorized independent person approved by the City Council or their designee for the purpose of effecting the removal of abandoned shopping carts.

"Director" means the Manager of Planning of the City, or their designee.

"Effective containment program" means a system selected by the retail establishment that results in no more than five shopping carts being removed without the owner's consent from the business premises or parking area within the twelve-month period commencing with the issuance of a business registration and licensing or the renewal of the business registration and licensing (minimum of five carts in a twelve-month time period). An effective containment program may include one or more of the following measures:

(1) Disabling devices on all shopping carts such as electronic or magnetic systems, which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts;

(2) Maintaining one or more security guards assigned the responsibility to deter or stop customers from removing shopping carts from the premises;

(3) Providing courtesy clerks to accompany customers out of the store and return shopping carts to the store; and/or,

(4) Any other measure approved by the Director in writing as a means to contain carts on the premises.

"Effective retrieval program" means no more than five abandoned shopping carts are collected by the City or its contractor within the City limits and returned to the retail establishment within the twelve-month period commencing with the issuance of a business registration and licensing or the renewal of the business registration and licensing (minimum of five carts in a twelve-month time period). There is a rebuttable presumption that a cart found abandoned somewhere off the premises of the cart's owner was removed from the premises without the owner's consent and that if the City or its contractor removes it and returns it to the retail establishment, the cart was abandoned for more than forty-eight hours.

"Effective shopping cart nuisance abatement" means the retail establishment's ongoing activities to prevent the theft and abandonment of shopping carts from their parking area, combined with the retail establishment's ongoing activity to retrieve any abandoned shopping cart owned by the retail establishment from public or private property within the City within forty-eight hours.

"Enforcement personnel" means any person authorized to issue citations as set forth in Palmdale Municipal Code Section 1.16.010.

"Identified cart" means a shopping cart that has a permanently affixed sign that identifies, in accordance with California Business and Professions Code Section 22435.1, the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart to the owner or retailer. If the cart owner operates more than one store, the sign shall identify the location of the store where the cart is used.

"Parking area" means a parking lot or other property provided by a retail establishment for use by a customer for parking an automobile or other vehicle. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the multistore complex or shopping center.

"Person" means a natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.

"Unidentified cart" means a shopping cart that is not an identified cart, as defined above.

12.30.030 ~~Shopping cart signs required~~ Declaration of Public Nuisance

~~(A) Each shopping cart used within the City shall have a permanently affixed, and clearly visible, sign that:~~

~~(1) Identifies the owner of the cart or owner's retail establishment, or both;~~

~~(2) Lists the address of the owner of the retail establishment for shopping cart return and a telephone number at which a person may contact the owner to retrieve the shopping cart;~~

~~(3) Notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; and~~

~~(4) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law.~~

~~(B) It shall be the responsibility of each shopping cart owner to comply with subsection (A) of this section, and to continuously maintain, or cause to be maintained, the required sign in such a manner that the required information is accurate, current, and clearly legible. (Ord. 1336 § 1, 2008)~~

Any violation of this Chapter shall constitute a public nuisance subject to abatement procedures prescribed herein and in PMC Chapter 8.36.

12.30.040 ~~Unauthorized removal or possession of a shopping cart~~ Mandatory shopping cart markings and signage

~~(A) It is unlawful to do any of the following acts, if a shopping cart has a permanently affixed sign as provided in PMC 12.30.030:~~

~~(1) To remove a shopping cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(2) To be in possession of any shopping cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(3) To be in possession of any shopping cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(4) To leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(5) To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(6) To be in possession of any shopping cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(B) This section shall not apply to the owner of a shopping cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or a retailer to be in possession of the shopping cart or~~

~~to remove the shopping cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in subsection (A) of this section.~~

~~(C) In any civil proceeding, any shopping cart which has a sign affixed to it pursuant to PMC 12.30.030 shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.~~

~~(D) In any criminal proceeding, it may be inferred that any shopping cart which has a sign affixed to it pursuant to PMC 12.30.030 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign. (Ord. 1336 § 1, 2008)~~

(A) Each shopping cart used within the City shall be maintained as an identified cart and shall have a permanently affixed, and clearly visible, sign that:

(1) Identifies the owner of the cart or owner's retail establishment, or both;

(2) Lists the address of the owner of the retail establishment for shopping cart return and a telephone number at which a person may contact the owner to retrieve the shopping cart;

(3) Notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; and

(4) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law.

(B) It shall be the responsibility of each shopping cart owner to comply with Subsection (A) of this Section, and to continuously maintain, or cause to be maintained, the required sign in such a manner that the required information is accurate, current, and clearly legible.

(C) It shall be the responsibility of each shopping cart owner to provide signage on their premises in a conspicuous location near all customer entrances and exits and throughout the premises, including the parking area, in both English and Spanish, notifying cart users that removal of carts from the premises or parking area is prohibited by State law without the written consent of the retail establishment.

12.30.050 ~~Abatement, removal and storage of abandoned shopping cart~~ Unlawful removal or possession of shopping carts prohibited – Power to contract.

~~(A) The City Manager, or his designee, is authorized to abate, remove and store abandoned shopping carts found within the City. Procedures relating to the abatement, removal and storage of abandoned shopping carts shall be pursuant to Section 22435.7 of the California Business and Professions Code.~~

~~(B) The administrative fees for the removal and storage of shopping carts shall be established or modified by resolution of the City Council and shall include the actual cost of removal and storage of any shopping cart, or parts thereof, and the proportionate share of any administrative costs associated therewith. (Ord. 1336 § 1, 2008)~~

(A) Unlawful Possession. It is unlawful for any person other than a cart owner or its authorized representative to do any of the following acts:

(1) To remove or cause to be removed any cart from a retail establishment or a parking area without the prior written consent of the owner;

(2) To possess any cart that has been removed from a parking area without the prior written consent of the cart owner or retail establishment, with the intent to temporarily or permanently deprive the owner of possession of the cart;

(3) To alter, convert, or tamper with any cart, or remove any part or portion thereof, or to remove, obliterate, or alter any identification, including, but not limited to, any serial numbers, or to possess any cart that has been altered, converted, or tampered with or whose identification has been removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart without the prior written consent of the cart owner; or,

(4) To abandon or leave any cart, which has been removed from a business establishment or a parking facility, upon any public property or upon any private property that is not the premises of the retail establishment or the parking facility.

(B) This Section shall not apply to the owner of a shopping cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or a retailer to be in possession of the shopping cart or to remove the shopping cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in subsection (A) of this Section. For purposes of all provisions in this Chapter, any person removing a cart from the retail

business or parking area with consent of the cart owner shall carry a copy of such written consent on their person.

(C) Engagement of Contractor. The City may, in accordance with the applicable City policies and as approved by City Council, cause the City to engage a contractor to retrieve abandoned carts and such contractor shall comply with the provisions of this chapter and applicable state law including, but not limited to, Business and Professions Code Section 22435.10 et seq.

(D) In any civil proceeding, any shopping cart which has a sign affixed to it pursuant to Section 12.30.040 shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.

(E) In any criminal proceeding, it may be inferred that any shopping cart which has a sign affixed to it pursuant to Section 12.30.040 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

12.30.060 ~~Shopping cart control plan~~ Effective cart nuisance abatement program

~~(A) Except as otherwise provided in this chapter, every owner who provides shopping carts to customers for use on the premises of any retail establishment shall develop, implement and comply with the provisions of a written plan approved by the City designed to prevent customers from removing shopping carts from the premises of the retail establishment without authorization of the owner and to provide for the prompt retrieval of any abandoned shopping cart.~~

~~(B) The shopping cart control plan shall be designed to effectively prevent the removal of shopping carts from the retail establishment. The owner shall have the obligation to provide demonstrable evidence to the Director that the elements proposed will be effective. The plan shall include the following elements:~~

~~(1) Signs Affixed to Carts. Every shopping cart made available for use by customers shall comply with the sign requirements of PMC 12.30.030.~~

~~(2) Signs Posted on Premises. Conspicuous signs, in both English and Spanish, shall be placed and maintained on the premises near all customer entrances and exits and throughout the premises, including the parking area, warning customers that removal of shopping carts from the premises is prohibited by state law.~~

~~(3) Shopping Cart Inventory. The cart control plan shall include a complete list of all shopping carts maintained on or in the retail establishment.~~

~~(4) Cart Containment. Specific physical measures shall be implemented and maintained by the owner to prevent, deter or impede the removal of shopping carts from the premises. Such physical measures shall be specifically identified in the cart control plan and may include, but are not limited to, the following:~~

~~(a) Electronic or other disabling devices installed and maintained on carts;~~

~~(b) Maintaining one or more security guards assigned the responsibility to deter or stop customers from removing shopping carts from the premises;~~

~~(c) Providing courtesy clerks to accompany customers out of the store and return shopping carts to the store;~~

~~(d) Any other physical measures designed to prevent, deter or impede the removal of shopping carts from the premises that is approved by the City.~~

~~(5) Employee Training. The owner of the retail establishment shall implement and maintain a periodic training program for its new and existing employees designed to educate such employees concerning the requirements of the cart control plan and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment. The cart control plan shall expressly describe the employee training program.~~

~~(6) Cart Confinement During Non-Business Hours. The cart control plan shall include a plan for storing shopping carts during non-business hours to prevent theft while the retail establishment is closed.~~

~~(7) Shopping Cart Retrieval. The cart control plan shall include provisions for the retrieval of abandoned shopping carts. The cart retrieval element should identify the following:~~

~~(a) Retrieval Personnel. The owner shall provide personnel for purposes of the retrieval of abandoned shopping carts. Such personnel may be either employees of the business or one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both. The cart control plan shall either (i) identify the number of employees who will be assigned such cart retrieval duties, the number of total hours per week that each assigned employee will perform such services (in addition to any on-premises retrieval duties to which such employee may be assigned), and the training each of such personnel has received or will receive concerning the retrieval of abandoned shopping carts, and/or (ii) include a copy of each contract with a cart retrieval~~

~~service (other than confidential financial information which may be redacted from the contract).~~

~~(b) Retrieval Area. The owner shall provide retrieval personnel in sufficient number to assure that all public streets within a minimum one and one-half mile radius of the premises of the retail establishment are patrolled not less often than every 48 hours, and all bus stops within a minimum one and one-half mile radius of the retail establishment are patrolled not less often than every 24 hours, and each abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found. The cart control plan shall identify the perimeter streets and bus stops in which all streets within the perimeter area will be patrolled as required by this subsection; the manner, frequency and times of such patrols; and the procedures to be employed by the retail establishment to identify and retrieve any abandoned shopping carts. The cart control plan shall identify the number of trucks, hours of operation of the retrieval personnel, and such other information as reasonably required by the City to assure that the owner is devoting sufficient resources to cart retrieval operations to comply with the provisions of this section and the approved cart control plan.~~

~~(C) Collaboration with Other Businesses. Two or more retail establishments located within the same shopping or retail center or sharing a common parking area may collaborate and submit a single cart control plan.~~

~~(D) Exemption. The requirements of this section shall not apply to any retail establishment that provides a total of 10 or less shopping carts for use by customers. (Ord. 1336 § 1, 2008)~~

It is unlawful for any person owning a retail establishment located in the City where carts are available for customer use not to implement and maintain an effective cart nuisance abatement program. Effectiveness is measured by the performance of the retail establishment's effective cart nuisance abatement program in compliance with this Section. Any cart owner shall implement and use any reasonable means in any combination to: (i) prevent the removal or theft of their carts from their premises and parking area and subsequent abandonment of their carts within the City limits; and (ii) if such prevention measures are not one hundred percent effective, cart owners shall retrieve any and all their abandoned shopping carts from within the City boundaries within forty-eight hours.

(A) Elements of an Effective Cart Nuisance Abatement Program. Within the timeframes set forth in subsections 12.30.060(B) and (D) below, all retail establishments/cart owners must: (i) notify the Director that they own carts for the use of their customers on their

premises; and (ii) submit a written plan for the implementation of an effective cart nuisance abatement program. The program shall include, but is not limited to, the following:

(1) Either an effective containment program or an effective retrieval program as each is defined in Section 12.30.020, or both.

(2) If a retail establishment has a valid and operational contract with a contractor recognized by the City to retrieve abandoned shopping carts and return them to the retail establishment on an ongoing and regular basis of at least three times per week, then the owner is presumptively deemed to have an effective cart nuisance abatement program, which presumption may be rebutted if the cart retrieval contractor fails to meet the standards for "effectiveness" set forth in this Section. Nothing in this Section waives or limits compliance with the signage and cart marking mandates in Section 12.30.040.

(B) Submission of Plans for Implementing Effective Cart Nuisance Abatement Program. All retail establishments operating within the City limits shall submit, obtain approval from the City, and implement an effective cart nuisance abatement program.

(1) New or Relocated Retail Establishments. Each new retail establishment, and any existing retail establishment relocating to a different location within the City, shall submit a proposed plan for implementing an effective cart nuisance abatement program complying with the requirements of PMC 12.30.060(C) to the Director, and obtain approval thereof by the City, prior to providing any shopping carts to customers of the retail establishment. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Director unless accompanied by the processing fee established by the City Council.

(2) Existing Retail Establishments. Each existing retail establishment that otherwise does not already have an approved plan for effective cart nuisance abatement program, shall either (a) submit a proposed plan complying with the requirements of PMC 12.30.060(C) to the Director within 180 calendar days following the date of the most recent amendment of this Chapter or (b) submit a proposed plan complying with the requirements of PMC 12.30.060(C) to the Director in conjunction with the retail establishment's business license renewal application submitted to the City pursuant to Section 3.44.240, whichever is sooner. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.

(C) The owner shall have the obligation to provide demonstrable evidence to the Director that the elements proposed will be effective. The proposed plan for an effective cart nuisance abatement program shall contain the following information:

(1) That the retail establishment owns carts for the use of their customers on their premises and parking areas;

(2) The address of the retail establishment and identity of associated parking areas utilized directly for its carts;

(3) A contact phone number at the retail establishment in Palmdale for the person or persons, or job title of the person, who will be responsible for accepting all carts retrieved by the City and returned to the retail establishment during its normal hours of business;

(4) The type, color and number of carts owned;

(5) The plan shall include provisions for the retrieval of abandoned shopping carts consistent with the provisions below:

(a) Retrieval Plan. The owner shall provide a plan for purposes of the retrieval of abandoned shopping carts. Such personnel may be either employees of the business or one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both.

(b) Retrieval Area. The owner shall provide a retrieval plan to ensure that all public streets within a minimum one and one-half mile radius of the premises of the retail establishment are patrolled not less often than every 48 hours, and all bus stops within a minimum one and one-half mile radius of the retail establishment are patrolled not less often than every 24 hours, and each abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found.

(6) Photographic proof of compliance with the signage and cart marking mandates in Section 12.30.040;

(7) A plan for storing shopping carts during non-business hours to prevent theft while the retail establishment is closed;

(8) A narrative description, and any plans, photographs or other evidence demonstrating the implementation of an effective cart nuisance abatement program as defined in Section 12.30.020 and in compliance with this Section.

(D) Director Review and Approval. The Director shall review the plan for the proposed effective cart nuisance abatement program and approve or deny the plan within 30 days of its receipt. If the program plan is approved, the cart owner/retail establishment shall implement the approved effective cart nuisance abatement program within 30 days from the date of approval. If the plan is incomplete, the Director shall notify the cart owner in writing to revise the plan and resubmit it within 30 days of Director's notice. The Director may deny a plan for a proposed effective cart nuisance abatement program based upon one or more of the following grounds:

(1) Implementation of the plan violates any provision of the building, zoning, health, safety, fire, police or other provision of this code or any county, state or federal law that substantially affects public health, welfare, or safety;

(2) The plan fails to include all of the information required by this Chapter;

(3) The proposed plan is insufficient or inadequate to qualify as an effective cart nuisance abatement program as defined in Section 12.30.020 and in compliance with this Section;

(4) The plan is insufficient or inadequate to ensure the prompt retrieval of shopping carts removed from the premises;

(5) The proposed program fails to address any special or unique conditions to the geographical location of the business establishment or parking facility as such conditions relate to cart retention and theft removal prevention;

(6) Implementation of the proposed program would violate a term or condition of any agreement between the City on one hand, and the retail establishment, or owner of the parking area, or cart owner, on the other hand; or,

(7) The owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the plan, or in any amendment or report or other information required to be made.

(E) The decision of the Director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. If the plan is rejected as incomplete or inadequate, the Director shall indicate areas of incompleteness or inadequacy, and the owner shall have an additional 30 days in which to resubmit a complete and adequate plan. The decision of the Director is final.

(F) Noncompliance. A cart owner who fails to submit an effective cart nuisance abatement program, or whose program is denied, or whose program is approved but who then does not comply with the terms of the approved program, shall be subject to enforcement of these requirements as set forth in Section 12.30.120. Each day during which a retail establishment/cart owner has not complied with the provisions of this Chapter shall constitute a separate violation.

12.30.070 ~~Shopping cart control plan approval~~ Modification, Revocation, and Renewal of Effective Cart Nuisance Abatement Plan.

~~(A) New or Relocated Retail Establishments. Unless exempt, each new retail establishment, and any existing retail establishment relocating to a different location within the City, shall submit a proposed shopping cart control plan complying with the requirements of PMC 12.30.060 to the Director, and obtain approval thereof by the City, prior to providing any shopping carts to customers of the retail establishment. Each proposed shopping cart control plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Director unless accompanied by the processing fee established by the City Council.~~

~~(B) Existing Retail Establishments. Unless exempt, each existing retail establishment shall submit a proposed plan complying with the requirements of PMC 12.30.060 to the Director within 180 calendar days following the date of adoption of this chapter. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.~~

~~(C) Plan Review and Approval. Upon the filing of any proposed shopping cart control plan pursuant to PMC 12.30.060 or a request for renewal of an approved shopping cart control plan pursuant to PMC 12.30.090, and receipt of the required processing fee, the Director shall review the proposed plan and either approve or deny approval of the proposed plan within 30 calendar days following the receipt thereof by the Director. The Director may deny a plan based upon any of the following grounds:~~

~~(1) Implementation of the plan violates any provision of the building, zoning, health, safety, fire, police or other provision of this code or any county, state or federal law that substantially affects public health, welfare, or safety;~~

~~(2) The plan fails to include all of the information required by this chapter;~~

~~(3) The plan is insufficient or inadequate to prevent removal of shopping carts from the premises;~~

~~(4) The plan is insufficient or inadequate to ensure the prompt retrieval of shopping carts removed from the premises;~~

~~(5) The plan fails to address any special or unique conditions due to the geographical location of the premises as they relate to shopping cart retention and theft prevention efforts;~~

~~(6) Implementation of the plan violates a term or condition of a plan or other requirement of this code;~~

~~(7) The owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the plan, or in any amendment or report or other information required to be made.~~

~~(D) The decision of the Director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. The notice of decision of the Director shall be deemed given to the owner on the date of personal delivery or on the date of the fax transmission to the owner. Notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the owner on the fifth day following the date of deposit in the course of transmission with the United States Postal Service, first-class mail, postage prepaid. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. If the plan is rejected as incomplete or inadequate, the Director shall indicate areas of incompleteness or inadequacy, and the owner shall have an additional 30 days in which to resubmit a complete and adequate plan. The decision of the Director is final.~~

~~(E) Upon approval, a shopping cart control plan shall be valid for a period of five years. (Ord. 1336 § 1, 2008)~~

For purpose of enforcing this Chapter, enforcement personnel may enter public or private property as allowed by law, or with the consent of the property owner, or by warrant, to examine a cart or to cause the removal of such cart if authorized pursuant to this Chapter.

(A) Modification. Amendments by Owner. The owner of any retail establishment which has an approved effective cart nuisance abatement plan conforming to the requirements of this Chapter may, at any time, submit a proposed amendment to the approved plan,

which amendment shall be processed in accordance with the procedure provided for a proposed effective cart nuisance abatement plan as set forth in Section 12.30.060. Each proposed amendment shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed amendment shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.

(B) Revocation or Amendment by City. An approved effective cart nuisance abatement plan may be revoked by the Director, or modified in lieu of revocation in the exercise of the Director's sound discretion, upon any of the following grounds:

(1) The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of the approved effective cart nuisance abatement plan and has failed to correct the violation(s) for a period of at least 15 calendar days following the date of receipt of written notice of such violation(s) from the City; or

(2) The owner of any retail establishment with an approved effective cart nuisance abatement plan is operating, or is permitting the operation of, the retail establishment in violation of one or more of the requirements of this Chapter and has failed to correct the violation(s) for a period of at least 15 calendar days following the date of receipt of written notice of such violation(s) from the City; or

(3) The effective cart nuisance abatement plan, as approved, is inadequate to prevent the removal of shopping carts from the premises of the retail establishment, or reasonably ensure the prompt retrieval of abandoned shopping carts; or

(4) The owner of any retail establishment knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the effective cart nuisance abatement plan, or in any amendment or in any other required document.

(C) Renewal. Prior to the expiration of an approved effective cart nuisance abatement plan, the owner of any retail establishment holding an approved effective cart nuisance abatement plan shall submit to the Director a request for renewal. Each request for renewal shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No request for renewal shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.

(1) The request for renewal shall:

(a) Include a copy of the approved effective cart nuisance abatement plan; and,

(b) Identify any proposed amendments to the approved effective cart nuisance abatement plan.

(2) Requests for renewal shall be processed in accordance with Section 12.30.060(D) and the decision of the Director shall be made in accordance with Section 12.30.060(E).

(3) A renewed effective cart nuisance abatement plan shall be valid for a period of one year or until the date required for renewal of the retail establishment's existing business license. Each year, a renewal application must be submitted with the retail establishment's business license renewal application submitted to the City pursuant to Section 3.44.240.

12.30.080 ~~Shopping cart control plan modification~~ Abandoned shopping carts – Abatement and storage.

~~(A) Amendments by Owner. The owner of any retail establishment which has an approved shopping cart control plan conforming to the requirements of this chapter may, at any time, submit a proposed amendment to the approved plan, which amendment shall be processed in accordance with the procedure provided for a proposed shopping cart control plan as set forth in PMC 12.30.070. Each proposed amendment shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed amendment shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.~~

~~(B) Revocation or Amendment by City. An approved shopping cart control plan may be revoked by the Director, or modified in lieu of revocation in the exercise of the Director's sound discretion, upon any of the following grounds:~~

~~(1) The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of the approved shopping cart control plan and has failed to correct the violation(s) for a period of at least 15 calendar days following the date of receipt of written notice of such violation(s) from the City; or~~

~~(2) The owner of any retail establishment with an approved shopping cart control plan is operating, or is permitting the operation of, the retail establishment in violation of one or more of the requirements of this chapter and has failed to correct the violation(s) for a period of at least 15 calendar days following the date of receipt of written notice of such violation(s) from the City; or~~

~~(3) The shopping cart control plan, as approved, is inadequate to prevent the removal of shopping carts from the premises of the retail establishment, or reasonably ensure the prompt retrieval of abandoned shopping carts; or~~

~~(4) The owner of any retail establishment knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the shopping cart control plan, or in any amendment or in any other required document. (Ord. 1336 § 1, 2008)~~

(A) Removal. Enforcement personnel shall have the authority to remove any abandoned cart on public or private property, other than from the property of the cart owner, under the following conditions:
(1) Identified Carts. If the abandoned cart is an identified cart, removal may occur three business days after enforcement personnel gives the cart owner actual notice of the cart's discovery and location. A cart owner is deemed to have actual notice three days after the deposit of written notice in the United States mail, posted first-class to the address indicated on the cart or the cart owner's last known address. If actual notice is provided by telephone, enforcement personnel shall maintain a record of the time, date, and name of the person notified.

(2) Unidentified Carts. If the abandoned cart is an unidentified cart, but other information on the cart provides sufficient information as to the identification of the cart owner, removal may occur either after enforcement personnel notifies the owner by telephone of the cart's discovery and location and grants a reasonable period of time, not to exceed twenty-four hours, for the cart owner to retrieve such cart, or immediately after reasonable efforts by enforcement personnel to notify the owner by telephone have failed. Enforcement personnel shall maintain a record of the time, date, and name of the person notified or attempted to be notified. If the owner cannot be determined from information on the cart, the cart shall be deemed an "unidentified cart" subject to Section 12.30.090.

(B) Storage. Any abandoned cart removed from public or private property by enforcement personnel shall be stored for thirty days at a location designated by the Director, which is reasonably convenient to the cart owner and open for business at least six hours of each business day.

(C) Fees for Actual Costs Payable to City. Any abandoned cart removed from public or private property and stored pursuant to this Section shall be released to the lawful cart owner if claimed within thirty days after such removal and upon payment of a redemption fee. The redemption fee for the removal and storage of any abandoned cart under this Section shall be established by City Council resolution and shall cover the actual costs of removal, storage, and related administrative procedures. The schedule for such fees shall remain on file and be available in the office of the Director and the office of the City Clerk.

(D) Fines. In addition to any redemption fee for which a cart owner is liable, the owner shall also be liable for a fine in an amount established by resolution of the City Council for each occurrence in excess of three during any six-month period for failure to retrieve a cart in accordance with Section 12.30.090(A)(4). As used herein, an "occurrence" includes all of owner's carts impounded in accordance with this Chapter in a one-day period.

12.30.090 ~~Shoping cart control plan renewal~~ Option for immediate impoundment.

~~(A) Prior to the expiration of an approved shopping cart control plan, the owner of any retail establishment holding an approved shopping cart control plan shall submit to the Director a request for renewal. Each request for renewal shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No request for renewal shall be accepted for filing and processing by the Director unless accompanied by the processing fee as established by the City Council.~~

~~(B) The request for renewal shall:~~

~~(1) Include a copy of the approved shopping cart control plan;~~

~~(2) Demonstrate compliance with the approved cart control plan;~~

~~(3) Identify any proposed amendments to the approved cart control plan; and~~

~~(4) Identify the number of carts retrieved under the approved cart control plan.~~

~~(C) Requests for renewal shall be processed in accordance with PMC 12.30.070(C) and the decision of the Director shall be made in accordance with PMC 12.30.070(D).~~

~~(D) A renewed shopping cart control plan shall be valid for a period of five years. (Ord. 1336 § 1, 2008)~~

(A) Notwithstanding Section 12.30.080(A), enforcement personnel may impound an abandoned cart that otherwise meets the criteria set forth in Section 12.30.080(A) without complying with the three business day advance-notice requirement provided that each of the following is met:

(1) The cart owner of the abandoned cart is provided actual notice within twenty-four hours following the impound and that notice informs the cart owner as to the location where the cart may be claimed;

(2) Any cart so impounded shall be held at a location in compliance with Section 12.30.080(B);

(3) Any cart reclaimed by the cart owner within three business days following the date of actual notice as provided pursuant to this Section, shall be released and surrendered to the owner at no charge whatsoever, including the waiver of any redemption fees that would otherwise be applicable pursuant to Section 12.30.080(C); and,

(4) Any cart not reclaimed by the cart owner within three business days following the date of actual notice as provided pursuant to this Section, shall be subject to any applicable fee imposed pursuant to Section 12.30.080(C) commencing on the fourth business day following the date of notice but accruing from the date of retrieval and storage, and any applicable fine imposed pursuant to Section 12.30.080(D). Any cart reclaimed by the owner within three business days following the date of actual notice as provided pursuant to this Section, shall not be deemed an "occurrence" under Section 12.30.080(D).

(B) Any shopping cart involved in a violation of Section 12.30.050(A) is subject to immediate impoundment, and such impoundment shall follow the procedures provided in Section 12.30.090(A).

(C) Sale; Final Disposition. Any cart not reclaimed by the cart owner within thirty days of receipt following the date of actual notice as provided pursuant to this Section, may be sold or disposed of in accordance with Section 12.30.110.

12.30.100 ~~Enforcement~~ Notice of violation on unidentified shopping carts.

~~Any person violating any of the provisions of this chapter shall be punishable as set forth in PMC Title 1. Where the conduct constituting the violation is of a continuing nature, each day that the conduct continues shall be deemed a separate and distinct violation. (Ord. 1336 § 1, 2008)~~

Within ten days of the removal of an abandoned cart pursuant to this Chapter, enforcement personnel shall provide notice to any known owner of the cart by first-class mail at the address indicated on the cart or the cart owner's last known address.
The notice shall include the following information:

(i) date and location of removal of the cart from public or private property;

(ii) procedure for recovering such cart; and

(iii) last possible date such cart may be recovered. If the cart owner is unknown and not clearly identified on the cart, the cart shall be designated "unidentified." Enforcement personnel, for each unidentified cart, shall maintain a record containing the information above and a brief description of the cart.

12.30.110 Final disposition of unclaimed shopping carts.

Thirty days after notice is given to the owner, or after any shopping cart is designated "unidentified" pursuant to Section 12.30.100, any abandoned cart not claimed may be sold at public auction or otherwise disposed of. Any proceeds derived from such auction or disposal shall be used to pay the costs of removal, storage, and related administrative procedures. Surplus proceeds derived from such auction or disposal shall be deposited in the general fund of the City.

12.30.120 Enforcement.

For purpose of enforcing this Chapter, enforcement personnel may enter public or private property as allowed by law, or with the consent of the property owner, or by warrant, to examine a cart or to cause the removal of such cart if authorized pursuant to this chapter. Any person violating any of the provisions of this Chapter shall be punishable as set forth in PMC Title 1. Where the conduct constituting the violation is of a continuing nature, each day that the conduct continues shall be deemed a separate and distinct violation.
All retail establishment governed by this Chapter shall also comply with all other regulations and provisions in the City, including zoning and business licensing requirements.

Chapter 12.36 Parking Restricted to Facilitate Street Sweeping

12.36.010 Purpose and intent.
12.36.020 Definitions.
12.36.030 Authority.
12.36.040 Application.
12.36.050 Violation – Penalty.
12.36.010 Purpose and intent.

The purpose and intent of this Chapter is to restrict parking on City streets for limited periods on designated days to facilitate street sweeping to reduce risks of blocked gutters, flooding, and hazardous conditions associated with flooded public streets.

Uncollected debris or green waste left in City street gutters has the ability to enter into storm drains and clog or completely block gutters, which can result in flooding. Flooding

has the capability to block streets and sidewalks, which can create hazardous conditions for pedestrians, cyclists, and motorists.

Further, the uncollected debris or green waste that enters the City's storm drains can affect the health of the environment and animal inhabitants that are located within the creeks, estuaries, and any surrounding bodies of water.

This Chapter is adopted pursuant to the authority granted by California Vehicle Code Sections 22507 and 22507.6, including any successor statutes, for the purpose of restricting parking to facilitate City street sweeping and related procedures.

The purpose of this Chapter is to restrict parking on City streets or portions thereof for the purpose of allowing unobstructed street sweeping.

12.36.020 Definitions.

As used in this Chapter, the terms listed below shall have the following meaning assigned to them:

(A) "Entrance" means the intersection of any street or streets comprising an area of restricted parking for street-sweeping purposes on the same day or days and hours with another street or highway not subject to such a parking restriction, or subject to parking restrictions on different days and hours.

(B) "Person" means any natural person, firm, partnership, association, corporation, or other entity of any kind or nature.

(C) "Vehicle" means a vehicle as defined in Section 670 of the California Vehicle Code as the Section now reads or may hereafter be amended.

(D) The definitions set forth in PMC Chapter 1.20 are also applicable to this Chapter.

12.36.030 Authority.

(A) Authority to regulate. The Director is authorized to do the following:

(1) Determine the dates and times it is necessary to restrict parking on City streets

(2) Determine the location for placement and install signs restricting parking on any street or portion thereof on which it is necessary to restrict parking.

(a) All restrictive parking signs shall be installed in a conspicuous place at each street and shall be no less than 17 inches by 22 inches in size, with lettering not less than one inch in height, setting forth the day or days and hours parking is prohibited.

(3) Use discretional authority to determine and provide exemptions to persons for enforcement of this Chapter including but not limited to exemptions from these provisions for City projects previously approved by the City or if the provisions of this Chapter interfere with an existing special event permit or encroachment permit issued by the City. The Director at his/her sole discretion shall determine whether an exemption applies and if an exemption should be issued.

(B) Authority to enforce. All Enforcement Officers, any person or entity designated to do so by the Department, and by an entity or individual authorized pursuant to a written contract with the City to enforce parking regulations are authorized to enforce all provisions of this Chapter.

12.36.040 Application.

(A) Parking restricted where restrictive parking signs are posted.

(1) It is unlawful for any person to stop, stand, physically interfere, or park a vehicle on portions of City streets during the limited periods of time on designated days where authorized signs indicating restrictive parking has been posted on City streets or portions thereof in accordance with this Chapter.

(B) Exceptions. Section 12.36.040(A)(1) shall apply at all times and places within the City, except as follows:

(1) When operating in accordance with an exemption issued by the Director pursuant to Section 12.36.030(A)(3);

(2) When it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the direction of a peace officer or traffic control device;

(3) To any authorized emergency vehicles or a public utility vehicle utilized for responding to emergency incidents;

(4) When a more restrictive parking regulation has been established and adopted by the City Council;

(5) To any school bus designed and used or maintained for the transportation of any school pupil at or below the twelfth-grade level to or from a public or private school or to or from public or private school activities; and,

(6) When a commercial vehicle is making pickups or deliveries of goods, wares, or merchandise from or to any building or structure located on the restricted street or highway, or for the purpose of delivering materials to be used in the repair, alteration, remodeling, or reconstruction of any building or structure for which a building permit has previously been obtained.

(7) When street sweeping services are postponed by one day due to a holiday observed by street sweeping provider.

12.36.050 Violation – Penalty.

Pursuant to California Vehicle Code Section 40000.1, violations of any provision of this Chapter shall be punishable as an infraction pursuant to enforcement procedures set forth in PMC Title 1. Each day that a violation of this Chapter occurs shall constitute a new and separate offense.

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-078

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING ADOPTION OF UPDATED ADMINISTRATIVE FINE AMOUNTS FOR BUILDING AND SAFETY VIOLATIONS AND ADOPTION OF FINES AND PLAN PROCESSING AND REDEMPTION FEES ASSOCIATED WITH SHOPPING CART ENFORCEMENT AND ELIMINATION OF CERTAIN BUSINESS PERMIT FEES

WHEREAS, the City Council has determined that City Staff enforces building and safety regulations and violations and provides shopping cart enforcement; and

WHEREAS*,* the City Council desires to ensure that administrative remedies for violations of building and safety regulations are in compliance with fine limits set by State Law, including Government Code Section 36900; and

WHEREAS*,* the City Council may adopt the concurrently proposed Ordinance No. 1615 amending Chapter 12.30 (Shopping Carts) in Title 12 of the Palmdale Municipal Code, which will clarify and expand shopping cart abatement procedures and establish a redemption fee for the actual costs of removal, storage, and related administrative procedures for shopping cart abatement as well as establish a fine for repeated failure to retrieve shopping carts removed and stored by City staff; and

WHEREAS*,* the City Council desires to ensure it can properly and effectively serve the public in processing and issuing approval of effective shopping cart abatement plans and related enforcement procedures should Ordinance No. 1615 be adopted and wishes to set reasonable fees and fines for such efforts in compliance with State Law, including Business and Professions Code Section 22435 et seq.; and

WHEREAS, the City's Master Fee Schedule will also be amended, should Ordinance No. 1615 be adopted, to ensure certain business permits that are eliminated by the proposed ordinance are no longer included in the fee schedule; and

WHEREAS*,* the City Council conducted a duly noticed public hearing on November 15, 2023 at which time the public was invited to make oral and written presentations as part of the City Council's meeting prior to the adoption of this Resolution and concurrently proposed Ordinance No. 1615; and

WHEREAS*,* at least ten (10) days prior to the public hearing referenced above, the City made available for public inspection information required under Government Code Section 66000, et seq., and

WHEREAS, the City published notice of the public hearing as described above in accordance with Government Code Sections 6062(a), 66014, 66016, 66017 and 66018 for the various fees.

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. Adopt Resolution No. CC 2023-078 to authorize the proposed update to administrative fines for violations of building and safety regulations, establishment of a redemption fee for the actual costs of removal, storage, and related administrative procedures for shopping cart abatement, and establishment of a fine for repeated failure to retrieve shopping carts removed and stored by City staff.

SECTION 2. The City Council hereby finds and determines that the existing, new or increased fees, rates, fines, and charges established in this Resolution are in an amount reasonably necessary to recover the costs of providing the service, review, document, facility, or commodity for which such fee, rate, or charge is levied or authorized to be levied.

SECTION 3. Government Code Section 36900 establishes updated fine amounts for violations of local building and safety codes in the amounts as provided in the City's Master Fee Schedule as follows:

BUILDING & SAFETY		
Description	FY 2024 Fee	Comments
F. Administrative Penalties		
Municipal Code Standard Fine for Building and Safety Violations		
Except as otherwise specifically set forth, the Administrative Citation Fine amount imposed for any violation of local building and safety codes determined to be an infraction is punishable by the following:		
First	$130.00	Plus $25 late fee if applicable
Second	$700.00	Plus $50 late fee if applicable
Third or More	$1,300.00	Plus $125 late fee if applicable
Third or More for Commercial Properties Involving Additional Violations of Same Ordinance Within Two Years for Failure to Remove Visible Refuse or Prohibit Unauthorized Uses	$2,500.00	Plus $125 late fee if applicable

SECTION 4. Adoption of Resolution No. 2023-078 establishes that planning shall charge a fee with the submission of new and renewed shopping cart containment and abatement plans as provided in the City's Master Fee Schedule as follows:

PLANNING		
Description	FY 2024 Fee	Comments
Shopping Cart Plan		
New	$160.00	
Annual Renewal	$80.00	

SECTION 5. Adoption of Resolution No. 2023-078 establishes a redemption fee for actual costs of removal, storage, and related administrative procedures for shopping cart abatement, impoundment, and retrieval procedures as provided in the City's Master Fee Schedule as follows:

PLANNING		
Description	FY 2024 Fee	Comments
Shopping Carts		
Redemption Fee	$ –	Actual costs of removal, storage, and related administrative procedures required

SECTION 6. Adoption of Resolution No. 2023-078 establishes a fine for occurrences in excess of three during a specified six-month period for failure to retrieve shopping carts collected and impounded by the City as provided in the City's Master Fee Schedule as follows:

PLANNING		
Description	FY 2024 Fee	Comments
Shopping Carts		
Failure to Retrieve Fine	$50.00	Flat fine

SECTION 7. Adoption of Resolution No. 2023-078 eliminates the following business permit fees from the City's Master Fee Schedule:

BUSINESS PERMITS		
Description	FY 2024 Fee	Comments
Ambulances and Ambulance Drivers		
a. Application for Ambulance Operator Permit	$134.50	
b. Annual renewal of Ambulance - Operator Permit	$134.50	

BUSINESS PERMITS		
Description	FY 2024 Fee	Comments
c. Ambulance Driver/Attend ant Permit	$27.00	
d. Annual renewal for Ambulance Driver/Attendant Permit	$27.00	
Billiards		
a. Application for Permit for Billiard Club of Public Billiard Room	$188.25	
b. Annual renewal of permit	$161.25	
Bingo		
a. Application for permit	$50.00	
b. Annual renewal of permit	$50.00	
Carnivals and Concessions		
a. Application for permit		
i. For the first day	$390.25	
ii For each additional day	$101.00	
Dance Halls and Dances		
a. Application for Permit to Operate a Public or Private Dance Hall	$215.00	
b. Annual renewal of Permit to Operate a Public or Private Dance Hall	$188.25	
c. Application for Permit by other than a Permit of a Public or Private Dance Hall to Conduct a Public, Private, Special, or Youth Dance	107.50	Per day
Health Clubs		
a. Application for permit	390.25	
b. Annual renewal of permit	363.50	
House and Street Numbering		
a. Application for permit	53.75	+BG *
b. Annual renewal of permit	53.75	+BG *
Hypnotist		
a. Application for permit	295.75	+BG *
b. Annual renewal of permit	188.25	+BG *
Locksmith		
a. Application for permit	188.25	
b. Annual renewal of permit	161.25	

BUSINESS PERMITS		
Description	FY 2024 Fee	Comments
Motion Picture Theater		
a. Application for permit	390.25	
b. Annual renewal of permit	390.25	
Private Patrol Service		
a. Application for permit	188.25	
b. Annual renewal of permit	161.25	
Family Entertainment Permit (per PMC)		
a. Application for permit	188.25	
b. Annual renewal of permit	161.25	
Taxicabs and Taxicab Drivers		
a. Application for permit	510.75	
b. Application for permit modification	60.25	
c. Annual renewal of permit	430.25	
d. Application for Taxicab Driver's Permit	53.75	+BG
e. Annual renewal of Taxicab Driver's Permit	53.75	+BG
f. Application for change in location or for additional taxicab stands	53.75	+BG
g. Annual fee for each authorized taxicab stand	53.75	
Tow Trucks		
a. Application for permit	53.75	+BG investigation fee per driver
b. Annual renewal of permit	53.75	+BG investigation fee per driver
Miscellaneous Business Permit Fees		
b. Manager's Permit - Application for permit	37.75	+BG
c. Manager's Permit - Annual renewal of permit	37.75	+BG

SECTION 8. The administrative fine amounts for violations of building and safety regulations as set forth in the PMC shall become effective on the first date that the amounts can legally be enforced. If Ordinance No. 1615 is adopted, the new rates, fees, and fines set forth in this Resolution shall become effective on the first date that the amounts can legally be enforced. If Ordinance No. 1615 is not adopted, only the amounts related to administrative fines for building and safety violations shall become effective, but all other amounts set forth in this Resolution shall not become effective.

SECTION 9. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED and **ADOPTED** this 15th day of November, 2023.

Approved as to form:

_____
Laura Bettencourt, Mayor

ATTEST:

_____
William P. Curley, III, City Attorney

Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES:

NOES:_____

ABSTAIN:_____ABSENT:_____

Date:

Rochelle Scott, Acting City Clerk

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION**

DISTRICT: **5**

SUBJECT: **ADOPT ORDINANCE NO. 1617, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING PLANNED DEVELOPMENT 23-001; A REQUEST TO MODIFY THE STANDARDS OF DEVELOPMENT OF THE PALMDALE MUNICIPAL CODE FOR A PROPOSED PROJECT LOCATED WITHIN THE MIXED USE 1 ZONE**

ISSUE

Adopt Ordinance No. 1617; an Ordinance of the City Council of the City of Palmdale approving Planned Development (PD) 23-001, a request to modify the development standards specified within the Palmdale Municipal Code (PMC) for a proposed project within the Mixed Use 1 (MU 1) zone.

RECOMMENDATION

The Planning Commission recommends that the City Council:

1. Receive public testimony regarding proposed Ordinance No. 1617;
2. Adopt Ordinance No. 1617; and,
3. Find that the project is consistent with the previously approved environmental documents.

BACKGROUND

On November 9, 2023, the Planning Commission adopted Resolution No. PC-2023-022 recommending City Council approval of PD 23-001 and approved Site Plan Review (SPR) 23-003 for the development of foster youth housing and services located west of 30th Street East and approximately 1,000 feet south of Palmdale Boulevard, Figure 1, subject to City Council approval of PD 23-001. The applicant proposes to construct seven residential buildings, one mixed-use building including residential, community, and office uses, and associated outdoor recreation spaces in two phases. The seven townhouse buildings will each include two four-bedroom units with a connected studio unit. The mixed-use building will be located along 30th Street East and will include six affordable

studio units, 2,800 square feet of office space, and 4,200 square feet of community space, which are allowed uses within the MU 1 zone. The project is intended to provide housing for foster care youth, onsite resource caregivers, and family members.

FIGURE 1 – AERIAL MAP

DISCUSSION

The subject application, PD 23-001, is a request for approval of a document that allows flexibility of development standards, which will allow the development to be designed to suit the unique needs of the project. The proposed PD includes modified site-specific development standards to accommodate the unique needs of this development. The proposed PD is a request to modify the standards of development as provided in the table below.

PD 23-001 PROPOSED DEVELOPMENT STANDARDS DEVIATIONS

	PMC Standard	Proposed Standard	Deviations / Justification*
Setbacks	Front: - Residential Ground Floor: 15 to 25 feet - Non-Residential Ground Floor: five to 15 feet (PMC Table 17.55.010-1)	Front: - Residential Ground Floor: 15 to 45 feet - Non-Residential Ground Floor: five to 25 feet	Front: - Increase residential ground floor maximum setback to 45 feet. - Increase non-residential ground floor maximum setback to 25 feet. The increased front setback will allow for an angled landscape plaza along 30th Street East.
Height	Minimum ground floor height – Non-residential: 15 feet (Floor to floor) (PMC Table 17.55.010-1)	Minimum ground floor height – Non-residential: 12 feet	Reduce the minimum ground floor height of non-residential development by three feet. The proposed design provides a varied height along 30th Street East, from 13 to 31 feet in height, with a portion of the offices designed to have a height of 13 feet.
Multi-Family and Mixed-Use Design Standards	A minimum of 30 feet of open-to-the-sky separation between structures to allow for landscape, courtyards, passageways, and paseos. (DS 6.2.1)	Minimum eight feet of open-to-the-sky separation between structures	Decrease the required space between buildings by 12 feet. Landscaping and walkways between buildings will be provided. The project will still be required to comply with all requirements of the Building and Fire Codes.

PD 23-001 PROPOSED DEVELOPMENT STANDARDS DEVIATIONS (CONTINUED)

	PMC Standard	Proposed Standard	Deviations / Justification*
Off-Street Parking	Community Assembly, less than 5,000 square feet: One space for every 40 square feet (PMC Table 17.87.060-1)	One space for every 200 feet	Reduce the number of parking spaces required for the community assembly use. Twenty spaces for community assembly use will be provided. The community center will be used to host semimonthly events for foster children and parents, such as afterschool programming for the children living on the site and evening activities for resource parents and are anticipated to generate between 20 and 35 additional visitors. The existing PMC Standard requires 96 spaces (3,326 / 40) and the proposed standard will require 19 spaces (3,326 / 200).

**Justification is based on a review of the plans date stamped 'Received September 26, 2023', by the case planner.*

FISCAL IMPACT

$0; There is no fiscal impact associated with this action.

STRATEGIC PLAN

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community.

Prepared by:	Sarah Stachnik, Assistant Planner
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P Curley, III, City Attorney

ATTACHMENT

1. Ordinance No. 1617

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
ORDINANCE NO. 1617

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING PLANNED DEVELOPMENT 23-001; A REQUEST TO MODIFY THE STANDARDS OF DEVELOPMENT FOR A PROPOSED PROJECT LOCATED IN THE MIXED USE 1 (MU 1) ZONE (APN: 3018-026-001)

A. RECITALS

WHEREAS, Pursuant to Government Code Section 65453 (Division 1 of Title 7 of the California Government Code), the City Council adopted Ordinance No. 1603 on March 15, 2023, for a comprehensive update to the Palmdale Municipal Code (PMC), which provides development standards for projects within the City.

WHEREAS*,* SOS Children's Villages has filed an application requesting the approval of Planned Development (PD) 23-001 for minor deviations from the PMC to support the development of youth foster care housing on a property located west of 30th Street East, approximately 1,000 feet south of Palmdale Boulevard (APN: 3018-026-001) described herein (hereinafter referred to as "Application");

WHEREAS*,* the Application applies to the proposed PD 23-001, which includes deviations from the PMC specific to the approval of the development proposed on the site shown on the map attached hereto as Exhibit I;

WHEREAS, on November 9, 2023, the Planning Commission of the City of Palmdale adopted Resolution No. PC-2023-022 approving Site Plan Review (SPR) 23-003 and recommended approval of the Application by the City Council; and,

WHEREAS, on November 15, 2023, the City Council of the City of Palmdale conducted a duly noticed public hearing on the Application and concluded said hearing on that date. Evidence, both written and oral, was duly presented and considered by the City Council at the aforesaid public hearing, including but not limited to, the staff report dated November 15, 2023.

B. ORDINANCE

THE CITY COUNCIL OF THE CITY OF PALMDALE DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby specifically finds that the above recitals are true and correct and incorporated herein.

SECTION 2. The City Council hereby finds as follows with respect to the environmental documentation:

(a) PD 23-001 and SPR 23-003 have been reviewed for project-specific impacts and has been found to be Categorically Exempt from CEQA review pursuant to Section 15332, Class 32, of the CEQA Guidelines, which exempts in-fill development projects that have no significant impacts to the environment.

(b) The custodian of records for the environmental documents, and all other materials which constitute the record of proceedings upon which the City Council's decision is based, is the Planning Manager of the City of Palmdale. These documents are available for public review in the Planning Division of the City of Palmdale located at 38250 Sierra Highway, Palmdale, California 93550, telephone (661) 267-5200.

SECTION 3. Based upon substantial evidence presented to the City Council during the November 15, 2023, public hearing, including public testimony and written and oral staff reports, the City Council specifically finds as follows:

(a) The distribution, location, and extent of land uses are consistent with the goals, policies, and objectives of the General Plan.

The project is consistent with the goals, policies, and objectives of the General Plan, specifically, Equitable and Healthy Community Element Policy 6.5: *Resource families, promote the development of housing types that support resource families and meet the needs of foster youth and transition-age youth*. The Application requires some minor deviations from the PMC to support the proposed design of the foster youth housing and resource building. For example, the modifications to the existing standards include reduced parking, reduced non-residential ground floor height, increased front setback area, and reduced distance separation between structures. These deviations will not significantly alter any objectives of the General Plan and are consistent with the intention of the MU 1 (Mixed Use 1) General Plan Land Use designation.

(b) The site is suitable for the type and intensity of development.

The project site is adequate to support the proposed development and the project is consistent with the type and intensity of development intended for the MU 1 General Plan Land Use designation and zone.

Furthermore, the community center space is intended to serve smaller gatherings and onsite residents and will not generate the traffic or parking

requirement assumed in the PMC. As such, the proposed deviation from the PMC parking requirement will allow the provided parking to be consistent with the demand anticipated for this project.

(c) Adequate access is provided pursuant to the Circulation Plan prepared for the project and the General Plan Mobility Element.

Access to the site will be provided through a driveway along 30th Street East. Access to the residential townhouse area of the site will be gate restricted. In addition, an Americans with Disabilities Act path of travel will connect the sidewalk along 30th Street East to the community center and offices. Pedestrian access from the mixed-use parking area to the residential area will also be provided. Furthermore, the City Engineer and Los Angeles County Fire Department reviewed the project and determined that it is designed with adequate access to accommodate safe vehicular flow.

(d) The project site is or will be provided with adequate public services and facilities to support the proposed development.

The project site is within the City limits and requires connections to all utilities. The project will connect to the existing sewer along 30th Street East, which has sufficient capacity to handle the development. The developer will be required to coordinate with utility companies to ensure that required public improvements do not conflict with existing or proposed utilities. All existing utilities interfering with new construction are required to be relocated and impact fees will be required in compliance with PMC Chapters 3.40 (Traffic Impact Fee Requirements), 3.42 (Fire Facilities Impact Fee Requirements), and 3.45 (Public Facility Development Impact Fee Requirements). Furthermore, the project is within the Palmdale Water District (PWD) boundary and is required to comply with PWD's requirements. Police and fire services will be provided by Los Angeles County Sheriff's Department and Los Angeles County Fire Department.

(e) The flexibility in site development regulations contained in the Planned Development has resulted in a project demonstrating clear and substantial benefit to the City.

The project is intended to provide a village-like development to provide housing and support for foster children in the area; therefore, some

requirements for traditional multi-family development standards are not applicable. For example, the minimum distance between structures is 30 feet; however, due to the townhouse typology and configuration, the distance between structures will provide the desired passageway effect, but with a smaller distance. Strict adherence to the existing requirement would not allow for the desired site layout and housing typology. Additionally, the increased front setback will provide an attractive landscape area along 30th Street East and the slight reduction of non-residential ground floor height will allow for the desired building design. These modifications are consistent with the MU 1 zone by providing a pedestrian-friendly and attractive street frontage. Moreover, the reduction of the parking requirement will allow the project to be designed to accommodate the proposed uses and generous open space without providing a surplus of unused parking spaces.

SECTION 4. Based on the findings and conclusions set forth in the above Sections, and based on all other evidence in the record, the City Council hereby approves PD 23-001 to incorporate the proposed changes as shown in Exhibit II and find that the project is categorically exempt from environmental review.

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, or invalid, or ineffective, provided the basic purposes of this Ordinance and the benefits to the City and the public are not substantially impaired.

SECTION 6. The City Clerk shall certify to the adoption of this ordinance and shall cause this ordinance to be published or posted as required by law.

PASSED, APPROVED and **ADOPTED** this 15th day of November 2023

Approved as to form:

_____
Laura Bettencourt, Mayor

ATTEST:

_____
William P. Curley III, City Attorney

_____
Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of the City of Palmdale, California, do hereby certify that the foregoing Ordinance was duly introduced, passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 effective on the 15th day of December, 2023 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____
Rochelle Scott, Acting City Clerk

EXHIBIT I

AERIAL MAP FOR PLANNED DEVELOPMENT 23-001

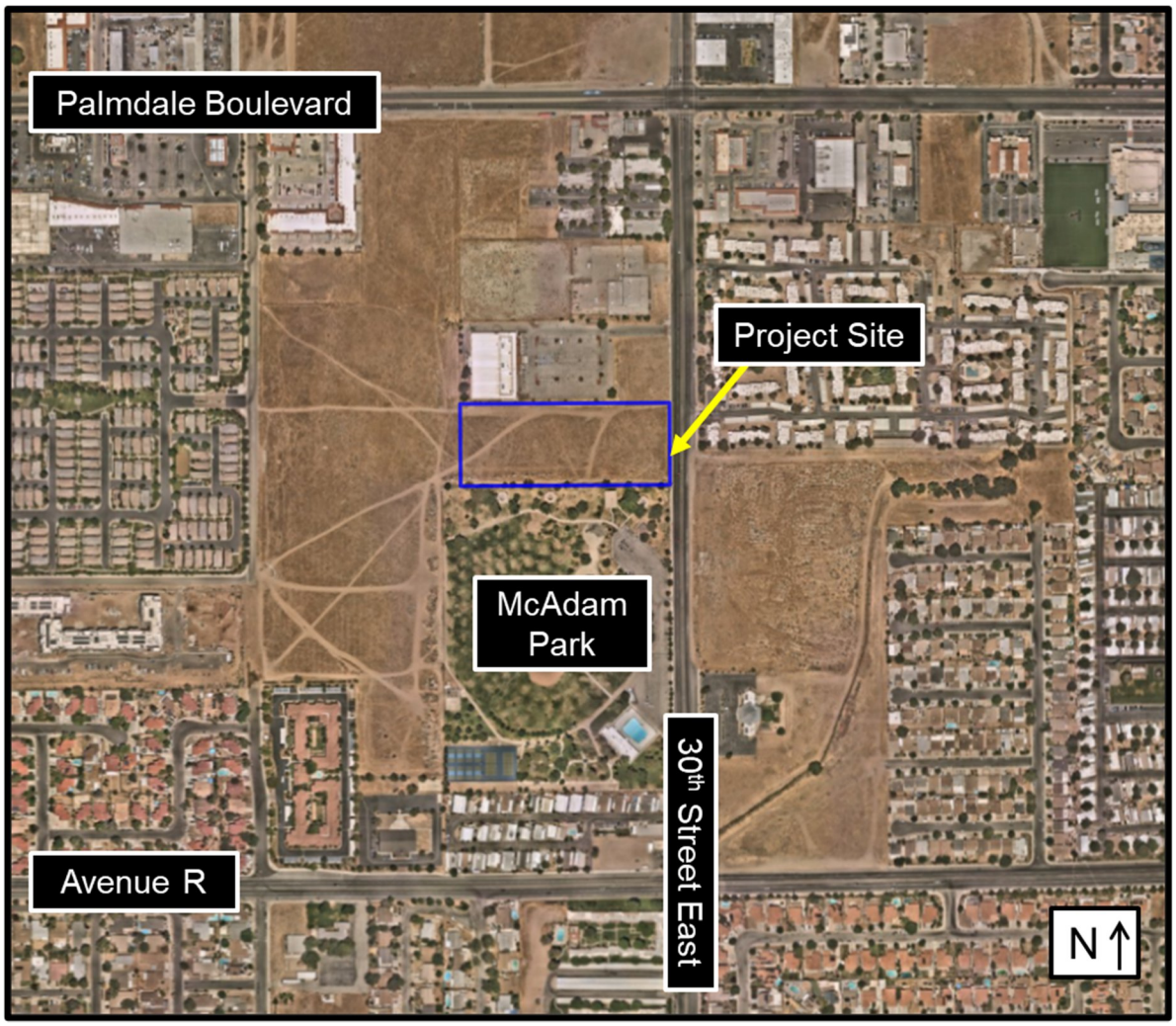


EXHIBIT II

SOS Children's Village Planned Development Document Guidelines

10/27/2023

ACMARTIN

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1 | PURPOSE

1.01 Introduction

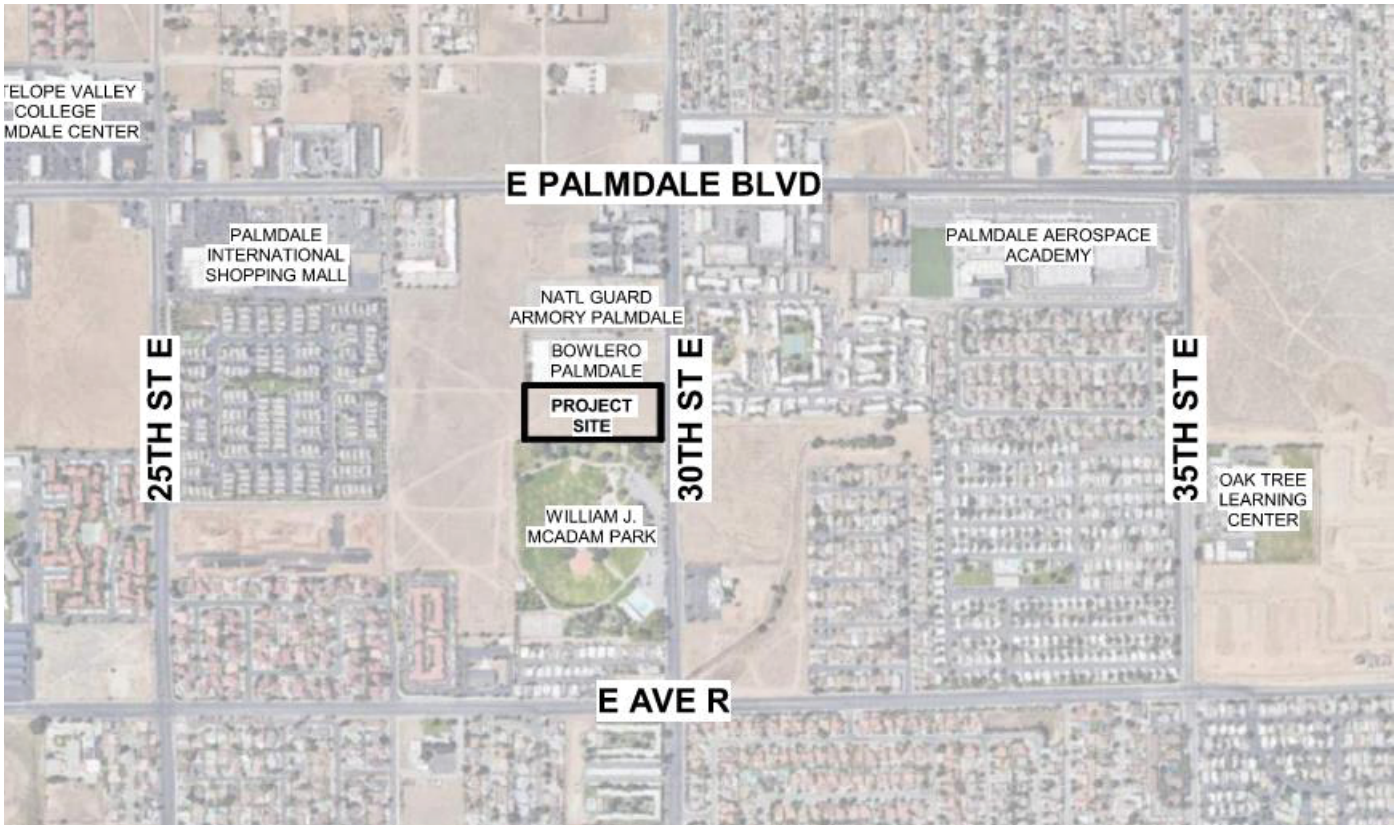
The purpose of the SOS Children's Villages Planned Development (PD) is to provide comprehensive planning for the development of SOS Children's Villages, a development of foster care housing, and associated uses. The Project will be designed to create a village-like housing development to provide stable housing for foster youth and allow siblings to stay together in the same home. In addition to the seven two-unit townhouse buildings, the project will also include a mixed-use building which will include office space, six studio units, and a community center to be used for the foster youth and the community.

The combination of the above site elements will be enhanced with amenities, which include a generous landscaped area which will include play areas for multiple age-ranges, picnic and outdoor event areas, and a garden. The mixed-use area will also include picnic and outdoor events areas, and a desert plan garden along 30th Street East. This Planned Development will result in a high quality, efficient, and thoughtfully designed mixed use development (Mixed Use 1 MU 1) which will bring in needed foster youth housing and services to the Antelope Valley.

2| SITE

2.01 Location

Project Site is located west of 30th Street East and 1,000 feet south of Palmdale Boulevard.



2| SITE

2.02 Legal Description

LOT 24, IN SECTION 30, TOWNSHIP 6 NORTH RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND ON FILE IN THE BUREAU OF LAND MANAGEMENT IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP SHOWING A PORTION OF THE LANDS OF THE PALMDALE COLONY COMPANY, IN BOOK 52 PAGES(S) 71, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

2.03 Project Data

- Assessor's Parcel Number: 3018-026-001
- Gross Area: 4.7 acres
- Existing Zone: Mixed Use 1 (MU 1)
- Existing Land Use: Mixed Use 1 (MU 1)

2.04 Exisiting site Condition

The Project Site is a vacant parcel located west of 30th Street East and 1,000 feet south of Palmdale Boulevard. The project site is bounded by commercial development to the north, William J. McAdam Park to the south, 30th Street East to the west, and vacant property to the east. The site is completely flat and consists of heavily disturbed desert scrub habitat encompassing mainly native plans and some non-native grasses.

3| PROJECT INFORMATION

3.01 Owner and Applicant Information

Property Owner & Applicant

SOS Children's Villages California, Owner

Alexandria Levitt, Applicant

2121 Avenue of the Stars, Ste. 200

Los Angeles, CA 90067

T: (310) 722-1618

Architect

AC Martin

Gilbert Rocca

444 South Flower St, Suite 1200

Los Angeles, CA 90071

T: (213) 614-6005

Landscape Architect

TGP

Nanda Raghunathan

P.O. Box 704

Montrose, CA 91021

T: (818) 797-5914

Civil Engineer

LFA

Frank Larocca

319 Main St

El Segundo, CA 90245

T: (213) 239-9700

3.02 Project Description

The applicant is proposing to construct seven residential buildings, one mixed use building, and associated outdoor recreation spaces in two phases located west of 30th Street East and approximately 1,000 feet south of Palmdale Boulevard. The seven townhouse buildings will each include two four-bedroom units with a connected studio unit. The mixed-use building will be located along 30th Street East and will include six affordable studio units, 2,800 square feet of office space, and 4,200 square feet of community space, which are allowed uses within the Mixed Use 1 (MU1) zone. The project is intended to provide housing for foster care youth, onsite resource caregivers, and family members, the community space will be available to both development residents as well as the City of Palmdale Community.

3.03 Permitted Uses

3.3 Permitted Uses: the proposed project is allowed within the MU 1 zone.

3.04 Term of Planned Development Document

The Planned Development Document will expire five years after the date of approval, with one possible five-year time extension.

4| SPECIAL DEVELOPMENT STANDARDS

4.01 Building Setbacks

Front Development setback: Residential Ground Floor: 15 to 45 feet

Front Development setback: Non-Residential Ground Floor: 5 to 25 feet

4.02 Height

Non-residential ground floor height: 12 feet.

4.03 Parking

Community Assembly: One space for every 200 feet.

4.04 Distance between buildings

Distance between buildings (Multi-Family and Mixed-Use Design Standards) Minimum 8 feet open-to-the-sky separation between structures.

4.05 Site Design

The project is designed with the Community Center & studio units along 30th St E. The proposed seven residential buildings (14 total units) are located to the East of the Community Center and are designed to overlook private open space, with related parking and vehicle access along the perimeter.

5| IMPLEMENTATION

5.01 Development Review Procedures

As part of the process for the review of precise grading plans and building permit applications, the developer also shall submit a site plan covering the proposed permit area. The Planning Division shall review each site plan for substantial compliance with this PD text. The site plans shall be approved if they are in substantial compliance with this PD text. While this PD text generally addresses the approximate size, location, and mix of uses for individual buildings within the project, however, those characteristics are intended to generally reflect the project concept as a whole, as opposed to the specific size, location, and mix of uses for any individual building. With respect to building size, location, and uses, therefore, Post Approval Plan Check shall focus on consistency with the project concept, while architectural, landscaping, and design elements, intensity of use, parking requirements, and other development standards shall be in substantial conformance with this PD text. Changes from the initial approval will require approval of a modification to the plans/project. If there is substantial compliance, site plans shall be approved by the Planning Department. All Plans must be in compliance with the standards specified within this Planned Development document. If the Planning Manager determines that the site plan or building elevations are not consistent with this Planned Development document, the appropriate application must be submitted in accordance with the Palmdale Municipal Code.

5.02 Parking

The project shall provide parking spaces as defined in Section Three of the Special Development Standards, 4.3 Parking, of this PD and Palmdale Municipal Code Section 17.87. Prior to maximum buildout, the developer must provide surface parking to provide the required number of parking spaces as defined in Section 4.3, for the buildings then proposed. As part of its Post Approval Plan Check, the Planning Division shall review proposed site plans for compliance with this parking requirement.

5.03 Ongoing Maintenance of Common Areas and Facilities

Common areas, commercial buildings, residential buildings and accessory structures, shall be maintained by the developer, its successors, a parking, landscape, or similar district, or one or more associations of developers/owners created to maintain common areas and facilities.

6| APPENDIX

6.01 Proposed Site Plan

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **FINANCE DIVISION**

DISTRICT: **ALL**

SUBJECT: **ADOPT RESOLUTION NO. CC 2023-068, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE CALLING SPECIAL ELECTION REGARDING ALTERATION OF RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES FOR THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH); AND RESOLUTION NO. CC 2023-069, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE DECLARING RESULTS OF SPECIAL ALTERATION ELECTION IN THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH), DETERMINING THAT ALTERATION OF THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES FOR THE DISTRICT IS LAWFULLY AUTHORIZED, AND DIRECTING RECORDING OF AN AMENDMENT TO THE AMENDED AND RESTATED NOTICE OF SPECIAL TAX LIEN FOR THE DISTRICT.**

ISSUE

Adopt Resolution No. CC 2023-068, a Resolution of the City Council of the City of Palmdale calling special election regarding alteration of Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch).

Adopt Resolution No. CC 2023-069, a Resolution of the City Council of the City of Palmdale declaring results of special alteration election in the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), determining that alteration of the Rate and Method of Apportionment of Special Taxes for the District is lawfully authorized, and directing recording of an amendment to the Amended and Restated Notice of Special Tax Lien for the District.

RECOMMENDATION

Staff recommends that the City Council:

1. Conduct the public hearing to accept public testimony on the proposed alteration of the Rate and Method of Apportionment of Special Taxes for the City of

Palmdale Community Facilities District No. 93-1 (Ritter Ranch) pursuant to City Council Resolution No. CC 2023-061.

2. Adopt Resolution No. CC 2023-068, a Resolution of the City Council of the City of Palmdale calling special election regarding alteration of Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch).

3. Conduct special alteration election.

4. Adopt Resolution No. CC 2023-069, a Resolution of the City Council of the City of Palmdale declaring results of special alteration election in the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), determining that alteration of the Rate and Method of Apportionment of Special Taxes for the District is lawfully authorized, and directing recording of an amendment to the Amended and Restated Notice of Special Tax Lien for the District.

BACKGROUND

In connection with the proposed master planned development of an area known as Ritter Ranch ("Project"), the City formed City of Palmdale Community Facilities District 93-1 ("CFD 93-1") to finance certain public facilities for the Project. The City issued Special Tax Bonds for CFD 93-1 in 1995 for that purpose ("93-1 Bonds"). The outstanding 93-1 Bonds were purchased by Preston Hollow Capital, LLC ("PHC") in 2018. In 2020, PHC also acquired the property within CFD 93-1 and transferred the land to RdR Development Holdings, LLC ("RdR"), a limited liability company for which PHC is the sole member. Collectively, PHC and RdR are referred to below as the RdR Parties. PHC continues to own the 93-1 Bonds and RdR continues to own the property within CFD 93-1.

In September 2022, the RdR Parties were prepared to proceed with the development of the first phase of the Project, which is expected to include up to 1,180 residential units ("Phase 1"). They requested, and the City formed, a new community facilities district for the Phase 1 property portion of the Project ("CFD 2022-3") to fund public infrastructure and improvements necessary for the development of the Project. The RdR Parties have since decided to cancel all the outstanding CFD 93-1 Bonds prior to proceeding with the issuance of special tax bonds for CFD 2022-3.

It was determined that additional actions are needed with respect to CFD 93-1 in order to accomplish the termination of the special tax lien relating to outstanding 93-1 Bonds upon cancellation of the 93-1 Bonds.

DISCUSSION

During the CFD 2022-3 formation process, the Phase 1 property was removed from CFD 93-1 and is now included in CFD 2022-3. At that time, the lien of 93-1 Bonds on

the new CFD 2022-3 property was extinguished. Subsequently, it was determined that the removal of the Phase 1 property from CFD 93-1 was premature and affects the ability to terminate the special tax lien relating to the 93-1 Bonds when they are canceled.

In order to remedy this, certain administrative actions are necessary. First, the Rate and Method of Apportionment of Special Taxes ("RMA") for CFD 93-1 must be altered to ensure that once the 93-1 Bonds are canceled, the lien of CFD 93-1 Bonds and related special taxes on the property within CFD 93-1 will be terminated. Second, the Phase 1 property must be annexed back into CFD 93-1.

The process to alter the RMA for CFD 93-1 and to annex the Phase 1 property into CFD 93-1 began with the City Council adoption of Resolution Nos. CC 2023-061 and CC 2023-062 on October 18, 2023. Those resolutions set November 15, 2023, as the date for public hearings on these actions.

It is now time to conclude the RMA alteration proceedings. This process requires that the City Council hold the public hearing regarding the alteration of the RMA, approve the resolution of alteration, hold a special alteration election (submitted to the sole owner of the property within CFD 93-1), and approve a resolution declaring the results of the election.

Alteration of RMA

The staff recommends that the City Council hold a public hearing to accept public testimony on the proposed alteration of the RMA. After conducting the public hearing, staff recommends that the City Council adopt Resolution No. CC 2023-068, which:

- alters the RMA, and
- submits the alteration of the RMA to the qualified elector of the territory within CFD 93-1.

After the adoption of the resolution, the Acting City Clerk will conduct the special election and open the ballot submitted by RdR, who is the qualified landowner elector.

Once the affirmative ballot is cast, staff recommends that the City Council adopt Resolution No. CC 2023-069, which:

- declares the results of the special annexation election,
- determines the validity of the prior proceedings, and
- directs recording of a second amendment to the Amended and Restated Notice of Special Tax Lien.

After the adoption of this resolution, the alteration proceedings will be complete.

FISCAL IMPACT

The special taxes levied on property in CFD 93-1 has no fiscal impact on the City. The authority to levy special taxes levied on property within CFD 93-1 will be terminated once the 93-1 Bonds are canceled.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

A. Seek innovative, cost-effective, customer-focused methods of service delivery.

C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

Prepared by:	Janelle Samson, Director of Finance
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

- Resolution CC 2023-068
- Resolution CC 2023-069

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
RESOLUTION NO. CC 2023-068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE CALLING SPECIAL ELECTION REGARDING ALTERATION OF THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES FOR THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH)

WHEREAS, on October 18, 2023, this City Council adopted Resolution No. CC 2023-061 entitled "A Resolution of the City Council of the City of Palmdale of Consideration to Alter the Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch)" (the "Resolution of Consideration"), proposing to alter the amended and restated rate and method of apportionment of special taxes referenced in the Resolution of Consideration (the "Rate and Method of Apportionment") for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, constituting Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"); and

WHEREAS, the Resolution of Consideration, which (a) made reference to the map of the boundaries of the District, (b) contained a description of the proposed alteration of the Rate and Method of Apportionment, and (c) called for a public hearing regarding the alteration is on file with the Acting City Clerk and the provisions thereof are incorporated herein by this reference as if fully set forth herein; and

WHEREAS, the sole owner of the property in the District subject to the levy of special taxes for the District (the "Landowner") has submitted to the City Council a Petition (Including Waivers), waiving, among other matters, all waiting periods under the Act for the public hearing, and the sole owner of the outstanding bonds issued by the City for the District (the "Bondowner") has submitted to the City and the District its consent to the alteration, and the Landowner and the Bondowner are the only parties affected by the proposed alteration; and

WHEREAS, on November 15, 2023, the City Council held the public hearing as required by the Act and the Resolution of Consideration relative to the proposed alteration of the Rate and Method of Apportionment; and

WHEREAS, at said hearing all interested persons with respect to the District desiring to be heard on all matters pertaining to the proposed alteration of the Rate and Method of Apportionment were heard and a full and fair hearing was held; and

WHEREAS, written protests with respect to the proposed alteration of the Rate and Method of Apportionment have not been filed with the Acting City Clerk by fifty percent (50%) or more of any registered voters residing within the territory of the District

or property owners of one-half (1/2) or more of the area of land within the District and not exempt from the levy of the special tax; and

WHEREAS, the proposition of the alteration of the Rate and Method of Apportionment shall be submitted to the Landowner, as the sole qualified elector of the District, as required by the Act.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF PALMDALE AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The proposed alteration of the Rate and Method of Apportionment of the special tax to be levied within the District has not been precluded by majority protest pursuant to Section 53337 of the Act.

SECTION 3. All prior proceedings taken by the City Council in connection with the proposed alteration of the Rate and Method of Apportionment, as set forth in the Resolution of Consideration, have been duly considered and are hereby found and determined to be valid and in conformity with the requirements of the Act.

SECTION 4. Subject to the approval of the qualified elector of the District at the special election referred to below, the Rate and Method of Apportionment is hereby altered from the Rate and Method of Apportionment specified in the Resolution No. 2014-038 of the City Council adopted on March 14, 2014, to include the new Section L as set forth in Exhibit A attached to the Resolution of Consideration.

SECTION 5. Pursuant to Sections 53338(a) and 53326 of the Act, the issue of the alteration of the Rate and Method of Apportionment shall be submitted to the qualified elector of the District at an election called therefor as provided below.

SECTION 6. The ballot measure shall be in the form attached hereto as Exhibit A and by this reference incorporated herein and said form of ballot is hereby approved.

SECTION 7. The City Council hereby finds that fewer than 12 persons have been registered to vote within the territory of the District for each of the ninety (90) days preceding the close of the public hearing heretofore conducted and concluded by the City Council for the purposes of these proceedings. Accordingly, and pursuant to Section 53326 of the Act, the City Council finds that for purposes of these proceedings, the qualified elector for the District is the Landowner, which is the sole owner of the land within the District, and that the vote shall be by said landowner, having one vote for each acre or portion of an acre such landowner owns in the District as of the close of the public hearing.

SECTION 8. The City Council hereby calls a special election to consider the measure described in Section 6 above, which election shall be held immediately following the adoption of this Resolution in the City Council Chambers. The Acting City Clerk is hereby designated as the official to conduct said election. It is hereby acknowledged that the Acting City Clerk has on file a copy of this Resolution, a map of the boundaries of the District, and a sufficient description to allow the Acting City Clerk to determine the boundaries of the District.

SECTION 9. The voted ballot shall be returned to the Acting City Clerk immediately following the adoption of this Resolution, and when the sole qualified elector has voted, the election shall be closed.

SECTION 10. Pursuant to Section 53327 of the Act, the election shall be conducted by mail ballot pursuant to applicable provisions of the Act and of the California Elections Code.

SECTION 11. The City Council acknowledges that the Acting City Clerk has caused to be delivered to the sole qualified elector of the District a ballot in the form set forth in Exhibit "A" hereto.

The ballot was accompanied by all supplies and written instructions necessary to the use and return of the ballot. The envelope to be used to return the ballot was enclosed with the ballot, had the return postage prepaid, and contained the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

Analysis and arguments with respect to the ballot measure have been waived by the landowner voter, by means of the waiver contained in its voted ballot, all as permitted by Section 53327(b) of the Act. The City Council hereby concurs with said waiver.

SECTION 12. The Acting City Clerk shall accept the ballot of the qualified elector in the City Council Chambers upon and prior to the adoption of this Resolution, whether said ballot be personally delivered or received by mail. The Acting City Clerk shall have available a ballot which may be marked at said location on the election day by said qualified elector.

SECTION 13. The City Council hereby further finds that the provision of Section 53326 of the Act requiring a minimum of 90 days following the adoption of this Resolution to elapse before the special election may occur is for the protection of the qualified elector of the District. The voted ballot of the sole qualified elector of the District contains a waiver

of the time for said special election. Accordingly, this City Council finds and determines that if the qualified elector submits its voted ballot in the election, the qualified elector will have agreed to the shortened time for the election and will thereby have been fully protected in these proceedings. This City Council also finds and determines that the Acting City Clerk has concurred with the shortened time for the election.

SECTION 14. This Resolution shall take effect upon its adoption.

PASSED, APPROVED and ADOPTED this 15th day of November, 2023.

Laura Bettencourt
Mayor

Approved as to form:

William P. Curley III
City Attorney

ATTEST:

Rochelle Scott,
Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing Resolution No. CC 2023-068 was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____
Rochelle Scott, Acting City Clerk

16007.52:J19237
11/6/23

EXHIBIT A

OFFICIAL BALLOT

SPECIAL ALTERATION ELECTION
CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

This ballot is for a special, landowner election. You must return this ballot in the enclosed postage paid envelope to the office of the Acting City Clerk of the City of Palmdale no later than immediately after adoption of the resolution of the City Council of the City calling said election, currently scheduled for November 15, 2023, either by mail or in person. The Acting City Clerk's office is located at 38300 Sierra Highway, Suite C, Palmdale, California 93550.

To vote, mark a cross (X) in the voting square after the word "YES" or after the word "NO". All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the Acting City Clerk of the City of Palmdale and obtain another.

BALLOT MEASURE: Shall the amended and restated rate and method of apportionment of the special taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District") be altered as described in Resolution No. 2023-061 of the City Council of the City of Palmdale adopted October 18, 2023, entitled "A Resolution of the City Council of the City of Palmdale of Consideration to Alter the Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch)"?	Yes _____ No _____

By execution in the space provided below, you also indicate your desire to have this election occur as soon as practicable and, accordingly, your waiver of any requirement for notice of or any time limit pertaining to the conduct of the election, and your waiver of any requirement for analysis and arguments with respect to the ballot measure.

Number of Votes: 236

Property Owner: RdR Development Holdings, LLC

By: _____

Its: _____

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
RESOLUTION NO. CC 2023-069

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE DECLARING RESULTS OF SPECIAL ALTERATION ELECTION IN THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH), DETERMINING THAT ALTERATION OF THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES FOR THE DISTRICT IS LAWFULLY AUTHORIZED, AND DIRECTING RECORDING OF AN AMENDMENT TO THE AMENDED AND RESTATED NOTICE OF SPECIAL TAX LIEN FOR THE DISTRICT

WHEREAS, in proceedings heretofore conducted by this City Council pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, constituting Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), on this date this City Council adopted Resolution No. CC 2023-068 entitled "A Resolution of the City Council of the City of Palmdale Calling Special Election Regarding Alteration of the Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch)" (the "Resolution Calling Election"), calling for a special election of the qualified elector within the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District"); and

WHEREAS, pursuant to the terms of the Resolution Calling Election, which are by this reference incorporated herein, the special election was held on this date, and the Acting City Clerk has on file a Canvass and Statement of Results of Election, a copy of which is attached hereto as Attachment A; and

WHEREAS, this City Council has reviewed said canvass and hereby approves it.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF PALMDALE AS FOLLOWS:

SECTION 1. The issue presented at said special election was the alteration of the amended and restated rate and method of apportionment of the special taxes to be levied within the District, as described in the Resolution Calling Election.

SECTION 2. The results of the special election are as set forth in the Canvass attached to this Resolution as Attachment A, which is incorporated herein by this reference. Pursuant to the voter approval, the issue presented at the special election was approved by the sole qualified elector of the District.

SECTION 3. The City Council hereby determines that the alteration of the amended and restated rate and method of apportionment of the special taxes for the District, as described in the Resolution Calling Election, is lawfully authorized.

SECTION 4. The Acting City Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of Los Angeles a second amendment to the amended and restated notice of special tax lien for the District, in substantially the form attached hereto as Attachment B, said recording to occur no later than fifteen days following adoption by this City Council of this Resolution.

SECTION 5. It is hereby found that all prior proceedings and actions taken by the City Council with respect to the District and the alteration of the amended and restated rate and method of apportionment of special taxes for the District were valid and in conformity with the Act.

SECTION 6. This Resolution shall take effect upon its adoption.

PASSED, APPROVED and ADOPTED this 15th day of November, 2023.

Laura Bettencourt
Mayor

Approved as to form:

William P. Curley III
City Attorney

ATTEST:

Rochelle Scott,
Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing Resolution No. CC 2023-069 was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____
Rochelle Scott, Acting City Clerk

16007.52:J19239
11/6/23

ATTACHMENT A

CANVASS OF RETURNS AND STATEMENT OF
RESULT OF SPECIAL ALTERATION ELECTION

City of Palmdale
Community Facilities District No. 93-1
(Ritter Ranch)

I hereby certify that on November 15, 2023, I canvassed the returns of the special alteration election held on November 15, 2023 in the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), and that the total number of ballots cast in said election and the total number of votes cast for and against the measure are as follows, and that the totals as shown for and against the measures are full, true and correct:

	Qualified Eligible Votes	Votes Cast	YES	NO
City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) Special Alteration Election, November 15, 2023.	236	____	____	____

BALLOT MEASURE: Shall the amended and restated rate and method of apportionment of the special taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District") be altered as described in Resolution No. 2023-061 of the City Council of the City of Palmdale adopted October 18, 2023, entitled "A Resolution of the City Council of the City of Palmdale of Consideration to Alter the Rate and Method of Apportionment of Special Taxes for the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch)"?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 15th day of November, 2023.

By: _____
Acting City Clerk, City of Palmdale

ATTACHMENT B

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

Acting City Clerk
City of Palmdale
38300 Sierra Highway, Suite C
Palmdale, California 93550

SECOND AMENDMENT TO
AMENDED AND RESTATED NOTICE OF SPECIAL TAX LIEN

CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

SECOND AMENDMENT TO
AMENDED AND RESTATED NOTICE OF SPECIAL TAX LIEN

CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

Pursuant to the requirements of Section 3114.5 of the California Streets and Highways Code and the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), an Amended and Restated Notice of Special Tax Lien (the "Original Notice") with respect to City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District") was recorded in the Office of the County Recorder of the County of Los Angeles, State of California (the "County Recorder"), on March 27, 2014, as Document No. 20140311807. The Original Notice was amended (as amended, the "Revised Notice") by a First Amendment to Amended and Restated Notice of Special Tax Lien recorded in the Office of the County Recorder on September 21, 2016, as Document No. 20161148547 to add to the facilities authorized to be financed by the District, as described in Exhibit A thereto.

This Second Amendment to Amended and Restated Notice of Special Tax Lien amends the Revised Notice in order to reflect an alteration to the amended and restated rate and method of apportionment of special taxes for the District by adding a new Section L thereto, as described in Exhibit A hereto, pursuant to proceedings confirmed by Resolution No. CC 2023-69 adopted by the City Council of the City of Palmdale on November 15, 2023.

The names of the owners and the assessor's tax parcel numbers of the real property included within the District and not exempt from the special tax (i) as of the date of recording of the Revised Notice are as set forth in Exhibit B attached hereto and by this reference made a part hereof, and (ii) as of the date of alteration of the amended and restated rate and method of apportionment of the special tax for the District, are as set forth in Exhibit C attached hereto and by this reference made a part hereof.

Reference is made to the boundary map of the District recorded in Book 179 of Maps of Assessment and Community Facilities Districts at Page 79, in the office of the County Recorder, which map is the final boundary map of the District.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Director of Finance of the City of Palmdale, 38300 Sierra Highway, Suite D, Palmdale, California 93550, telephone number (661) 267-5440.

Dated: _____, 2023

By: _____
Acting City Clerk,
City of Palmdale

EXHIBIT A

SECTION L TO BE ADDED TO THE
AMENDED AND RESTATED RATE AND METHOD
OF APPORTIONMENT FOR THE CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH)

L. Special Tax Termination

On the date on which no City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), Special Tax Bonds, Series 1995-A Senior Bonds remain outstanding, the Special Tax will cease to be levied on Parcels in CFD 93-1 with the purpose and effect set forth in the second paragraph of Section 53330.5 of the Act with respect to all Parcels then in CFD No. 93-1.

EXHIBIT B

PROPERTY OWNER AND ASSESSOR'S PARCEL NUMBERS
AS OF RECORDING OF REVISED NOTICE FOR THE CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH)

Assessor's Parcel Nos.	Names of Property Owner
3205-002-028	RdR Development Holdings, LLC
3205-002-051	2121 North Pearl Street, Suite 600
3205-002-053	Dallas, Texas 75201
3206-005-008	
3206-006-016	
3206-006-028	
3206-007-001	
3206-008-012	
3206-009-014	
3206-010-011	
3206-016-008	
3206-017-009	
3206-018-014	
3206-020-010	
3206-020-012	
3206-021-002	
3206-021-005	
3206-022-001	
3206-025-001	
3206-026-003	
3206-026-004	
3206-026-006	
3206-026-008	
3206-026-009	
3206-020-017	
3206-026-005	
3206-026-007	
3206-027-002	
3206-027-004	
3206-027-005	
3206-027-006	
3206-027-007	
3206-027-008	
3206-027-009	
3206-027-010	
3206-027-012	

EXHIBIT C

PROPERTY OWNER AND ASSESSOR'S PARCEL NUMBERS AS OF DATE OF ALTERATION OF THE AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES FOR THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH)

Assessor's Parcel Nos.	Name of Property Owner
3205-002-028	RdR Development Holdings, LLC 2121 North Pearl Street, Suite 600 Dallas, Texas 75201
3205-002-051	
3205-002-053	
3206-005-008	
3206-006-016	
3206-006-028	
3206-007-001	
3206-008-012	
3206-009-014	
3206-010-011	
3206-016-008	
3206-017-009	
3206-018-014	
3206-020-010	
3206-020-012	
3206-021-002	
3206-021-005	
3206-022-001	
3206-025-001	
3206-026-003	
3206-026-004	
3206-026-006	
3206-026-008	
3206-026-009	

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **FINANCE DIVISION**

DISTRICT: **ALL**

SUBJECT: **ADOPT RESOLUTION NO. CC 2023-070, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE OF ANNEXATION OF TERRITORY TO THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH), AUTHORIZING THE LEVY OF A SPECIAL TAX THEREIN AND SUBMITTING THE LEVY OF SPECIAL TAX TO THE QUALIFIED ELECTOR OF THE DISTRICT; AND RESOLUTION NO. CC 2023-071, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE DECLARING RESULTS OF SPECIAL ANNEXATION ELECTION, DETERMINING THE VALIDITY OF PRIOR PROCEEDINGS, AND DIRECTING RECORDING OF AMENDMENT TO NOTICE OF SPECIAL TAX LIEN - CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH).**

ISSUE

Adopt Resolution No. CC 2023-070, a Resolution of the City Council of the City of Palmdale of Annexation of territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), authorizing the levy of a special tax therein and submitting the levy of special tax to the qualified elector of the District.

Adopt Resolution No. CC 2023-071, a Resolution of the City Council of the City of Palmdale declaring results of special annexation election, determining the validity of prior proceedings, and directing recording of amendment to Notice of Special Tax Lien - City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch).

RECOMMENDATION

Staff recommends that the City Council:

1. Conduct the public hearing to accept public testimony on the proposed annexation of territory to City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) pursuant to City Council Resolution No. CC 2023-062.

2. Adopt Resolution No. CC 2023-070, a Resolution of the City Council of the City of Palmdale of annexation of territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), authorizing the levy of a special tax therein and submitting the levy of special tax to the qualified elector of the District.

3. Conduct special annexation election.

4. Adopt Resolution No. CC 2023-071, a Resolution of the City Council of the City of Palmdale declaring results of special annexation election, determining the validity of prior proceedings, and directing recording of amendment to Notice of Special Tax Lien - City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch).

BACKGROUND

In connection with the proposed master planned development of an area known as Ritter Ranch ("Project"), the City formed City of Palmdale Community Facilities District 93-1 ("CFD 93-1") to finance certain public facilities for the Project. The City issued Special Tax Bonds for CFD 93-1 in 1995 for that purpose ("93-1 Bonds"). The outstanding 93-1 Bonds were purchased by Preston Hollow Capital, LLC ("PHC") in 2018. In 2020, PHC also acquired the property within CFD 93-1 and transferred the land to RdR Development Holdings, LLC ("RdR"), a limited liability company for which PHC is the sole member. Collectively, PHC and RdR are referred to below as the RdR Parties. PHC continues to own the 93-1 Bonds and RdR continues to own the property within CFD 93-1.

In September 2022, the RdR Parties were prepared to proceed with the development of the first phase of the Project, which is expected to include up to 1,180 residential units ("Phase 1"). They requested, and the City formed, a new community facilities district for the Phase 1 property portion of the Project ("CFD 2022-3") to fund public infrastructure and improvements necessary for the development of the Project. The RdR Parties have since decided to cancel all the outstanding CFD 93-1 Bonds prior to proceeding with the issuance of special tax bonds for CFD 2022-3.

It was determined that additional actions are needed with respect to CFD 93-1 in order to accomplish the termination of the special tax lien relating to outstanding 93-1 Bonds upon cancellation of the 93-1 Bonds.

DISCUSSION

During the CFD 2022-3 formation process, the Phase 1 property was removed from CFD 93-1 and is now included in CFD 2022-3. At that time, the lien of 93-1 Bonds on the new CFD 2022-3 property was extinguished. Subsequently, it was determined that the removal of the Phase 1 property from CFD 93-1 was premature and affects the ability to terminate the special tax lien relating to the 93-1 Bonds when they are canceled.

In order to remedy this, certain administrative actions are necessary. First, the Rate and Method of Apportionment of Special Taxes ("RMA") for CFD 93-1 must be altered to provide that once the 93-1 Bonds are canceled, the lien of CFD 93-1 Bonds and related special taxes on the property within CFD 93-1 will be terminated. Second, the Phase 1 property must be annexed back into CFD 93-1.

The process to alter the RMA for CFD 93-1 and to annex the Phase 1 property into CFD 93-1 began with the City Council adoption of Resolution Nos. CC 2023-061 and CC 2023-062 on October 18, 2023. Those resolutions set November 15, 2023, as the date for public hearings on these actions.

It is now time to conclude the annexation proceedings. This process requires that the City Council hold the public hearing regarding the annexation of Phase 1 property, approve the resolution of annexation, hold a special annexation election (submitted to the sole owner of the property within CFD 93-1), and approve a resolution declaring the results of the election.

Annexation

The staff recommends that the City Council hold the public hearing to accept public testimony on the proposed annexation of territory to CFD 93-1 and consider and finally determine whether the public interest, convenience, and necessity require said annexation of territory to CFD 93-1 and the levy of special tax therein. After conducting the public hearing, staff recommends that the City Council adopt Resolution No. CC 2023-070, which:

- annexes the territory into CFD 93-1,
- authorizes the levy of special taxes on such annexed territory, and
- submits the levy of special taxes to the qualified elector of the territory to be annexed.

After the adoption of the resolution, the Acting City Clerk will conduct the special election and open the ballot submitted by RdR, who is the qualified landowner elector.

Once the affirmative ballot is cast, staff recommends that the City Council adopt Resolution No. CC 2023-071, which:

- declares the results of the special annexation election,
- determines the validity of the prior proceedings,
- directs recording of a third amendment to the Amended and Restated Notice of Special Tax Lien for the annexed territory, and

After the adoption of this resolution, the annexation proceedings will be complete.

FISCAL IMPACT

The special taxes levied on property in CFD 93-1 has no fiscal impact on the City. The authority to levy special taxes levied on property within CFD 93-1 will be terminated once the 93-1 Bonds are canceled.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

A. Seek innovative, cost-effective, customer-focused methods of service delivery.

C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

Prepared by:	Janelle Samson, Director of Finance
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

- Resolution CC 2023-070
- Resolution CC 2023-071

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
RESOLUTION NO. CC 2023-070

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE OF ANNEXATION OF TERRITORY TO THE CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH), AUTHORIZING THE LEVY OF A SPECIAL TAX THEREIN AND SUBMITTING LEVY OF SPECIAL TAX TO THE QUALIFIED ELECTOR OF THE DISTRICT

WHEREAS, on October 18, 2023, the City Council (the "City Council") of the City of Palmdale (the "City"), adopted Resolution No. CC 2023-062 entitled "A Resolution of the City Council of the City of Palmdale of Intention to Annex Territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) and to Authorize the Levy of Special Taxes Therein" (the "Resolution of Intention") stating its intention to annex territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District"), pursuant to the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 et seq. of the California Government Code (the "Act"); and

WHEREAS, a copy of the Resolution of Intention, incorporating a description of the territory to be annexed to the District and describing the facilities and services provided pursuant to the Act in the District and to be provided in the territory proposed to be annexed to the District and the amended and restated rate and method of apportionment of the special tax to be levied within the territory to be annexed to the District, and calling for a public hearing regarding annexation, is on file with the Acting City Clerk and the provisions thereof are fully incorporated herein by this reference as if fully set forth herein; and

WHEREAS, the sole owner of the property in the District subject to the levy of special taxes for the District, which also is the sole owner of the property proposed to be annexed to the District, has submitted to the City Council a Petition (Including Waivers) waiving, among other matters, all waiting periods under the Act for the public hearing; and

WHEREAS, on the date hereof, this City Council held the public hearing as required by the Act and the Resolution of Intention relative to the proposed annexation of territory to the District; and

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the annexation of territory to the District and the levy of special taxes within the area proposed to be annexed were heard and a full and fair hearing was held; and

WHEREAS, prior to the closing of the hearing, no written or oral protests had been made against the proposed annexation of territory to the District by (i) any registered voter residing in the existing District, or (ii) any registered voter residing in the territory proposed to be annexed to the District, or (iii) the owner of the land in the existing District, or (iv) the owner of the land proposed to be annexed to the District.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF PALMDALE AS FOLLOWS:

SECTION 1. All prior proceedings taken by this City Council with respect to the District and the proposed annexation of territory thereto have been duly considered and are hereby determined to be valid and in conformity with the Act, and the District has been validly established pursuant to the Act.

SECTION 2. The annexation of the territory to the District described in Exhibit A to the Resolution of Intention is hereby finally approved, said Exhibit A is hereby incorporated herein by this reference, and said territory is hereby ordered annexed to the District, subject to voter approval of the levy of the special taxes therein as hereinafter provided.

SECTION 3. The provisions of the Resolution of Intention, and of the Resolution of Formation and the Resolutions of Consideration (as described in Section 4 of the Resolution of Intention), each as heretofore adopted by this City Council, are by this reference incorporated herein, as if fully set forth herein.

SECTION 4. Pursuant to the provisions of Section 53339.7(a) of the Act, the proposition of the levy of the special tax within the territory to be annexed to the District shall be submitted to the qualified elector of the territory to be annexed to the District at an election called therefor as hereinafter provided.

SECTION 5. This City Council hereby finds that fewer than 12 persons have been registered to vote within the territory proposed to be annexed to the District for each of the 90 days preceding the close of the public hearing heretofore conducted and concluded by this City Council for the purposes of these annexation proceedings. Accordingly, and pursuant to Section 53326(b) of the Act, this City Council finds that the qualified elector for purposes of the annexation election is the sole landowner of the territory proposed to be annexed to the District and that the vote shall be by said landowner, having one vote for each acre or portion thereof the landowner owns in the territory proposed to be annexed to the District.

SECTION 6. This City Council hereby calls a special election to consider the measure described in Section 4 above, which election shall be held in the City Council Chambers immediately following adoption of this Resolution. The Acting City Clerk is hereby designated as the official to conduct said election. It is hereby acknowledged that the Acting City Clerk has on file the Resolution of Intention and a sufficient description to allow the Acting City Clerk to determine the boundaries of the territory to be annexed to the District.

The voted ballot shall be returned to the Acting City Clerk no later than immediately following the adoption of this Resolution, and when the qualified elector has voted the election shall be closed.

SECTION 7. Pursuant to Section 53326(d) of the Act, the election shall be conducted by mail ballot.

SECTION 8. This City Council acknowledges that the Acting City Clerk has caused to be delivered to the sole qualified elector of the District a ballot in the form set forth in Exhibit A hereto. The ballot indicated the number of votes to be voted by the landowner. The ballot was accompanied by all supplies and written instructions necessary for the use and return of the ballot. An envelope to be used to return the ballot was enclosed with the ballot, had the return postage prepaid, and contained the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

Analysis and arguments with respect to the ballot measure will be waived by the landowner voter by means of the waiver contained in its voted ballot, as permitted by Section 53327(b) of the Act.

SECTION 9. The Acting City Clerk shall accept the ballot of the qualified elector submitted immediately following or prior to the adoption of this Resolution, whether the ballot is personally delivered or was received by mail.

SECTION 10. This City Council hereby further finds that the provision of Section 53326 of the Act requiring a minimum of 90 days following the adoption of this Resolution to elapse before said special election may occur is for the protection of the qualified elector of the territory to be annexed to the District. The voted ballot of the qualified elector of the territory to be annexed to the District contains a waiver of any time limit for said special election. Accordingly, this City Council finds and determines that, to the extent that the qualified elector submits its voted ballot in the election, the qualified elector will have agreed to the shortened time for the election and will have thereby been fully protected in these proceedings. This City Council also finds and determines that the Acting City Clerk has concurred in the shortened time for the election.

SECTION 11. This Resolution shall take effect upon its adoption.

PASSED, APPROVED and ADOPTED this 15th day of November, 2023.

Laura Bettencourt, Mayor

Approved as to form:

ATTEST:

William P. Curley III,
City Attorney

Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing Resolution No. CC 2023-070 was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____
Rochelle Scott, Acting City Clerk

16007.50:J19241
11/6/23

EXHIBIT A

OFFICIAL BALLOT
SPECIAL ANNEXATION ELECTION

CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

This ballot is for a special, landowner election. You must return this ballot in the enclosed postage paid envelope to the office of the Acting City Clerk of the City of Palmdale no later than immediately after adoption of the resolution of the City Council of the City calling said election, currently scheduled for November 15, 2023, either by mail or in person. The Acting City Clerk's office is located at 38300 Sierra Highway, Suite C, Palmdale, California 93550.

To vote, mark a cross (X) in the voting line after the word "YES" or after the word "NO." All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the Acting City Clerk of the City of Palmdale and obtain another.

BALLOT MEASURE: Shall the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District"), be authorized to levy special taxes within the territory annexed to the District pursuant to and as described in Resolution No. CC 2023-062 entitled "A Resolution of the City Council of the City of Palmdale of Intention to Annex Territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) and to Authorize the Levy of Special Taxes Therein," adopted by the City Council of the City of Palmdale on October 18, 2023?	YES: _____ NO: _____

By execution in the space provided below, you also indicate your desire to have this election occur as soon as practicable and, accordingly, your waiver of any requirement for notice of or any time limit pertaining to the conduct of the election, and your waiver of any requirement for analysis and arguments with respect to the ballot measure.

Number of Votes:	236
Property Owned by Property Owner:	See Exhibit A
Property Owner:	RdR Development Holdings, LLC

By: _____

Its: _____

EXHIBIT A

PARCELS OWNED BY THE PROPERTY OWNER TO BE ANNEXED TO
CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

Los Angeles County Assessor's Parcel Nos.
3206-020-017
3206-026-005
3206-026-007
3206-027-002
3206-027-004
3206-027-005
3206-027-006
3206-027-007
3206-027-008
3206-027-009
3206-027-010
3206-027-012

CITY OF PALMDALE
COUNTY OF LOS ANGELES, CALIFORNIA
RESOLUTION NO. CC 2023-071

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE DECLARING RESULTS OF SPECIAL ELECTION, DETERMINING VALIDITY OF PRIOR PROCEEDINGS, AND DIRECTING RECORDING OF AMENDMENT TO NOTICE OF SPECIAL TAX LIEN – CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH)

WHEREAS, in proceedings conducted by this City Council of the City of Palmdale pursuant to the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 et seq. of the California Government Code (the "Act"), this City Council has adopted Resolution No. CC 2023-070 entitled “A Resolution of the City Council of the City of Palmdale of Annexation of Territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), Authorizing the Levy of a Special Tax Therein and Submitting Levy of Special Tax to the Qualified Elector of the District (the “Resolution of Annexation”), which called for a special election of the qualified landowner elector in the territory of land proposed to be annexed to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the “District”); and

WHEREAS, pursuant to the terms of the Resolution of Annexation, which is by this reference incorporated herein, the special election has been held and the Acting City Clerk has filed a Canvass and Statement of Result of Election, a copy of which is included as Attachment A hereto; and

WHEREAS, this City Council has reviewed said canvass and hereby approves it.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF PALMDALE AS FOLLOWS:

SECTION 1. The issue presented at the special election was the levy of a special tax within the territory annexed to the District, to be levied in accordance with the amended and restated rate and method of apportionment of special taxes for the District, heretofore approved by this City Council.

SECTION 2. Pursuant to the Canvass attached as Exhibit A, the issue presented at the special election was unanimously approved by the sole owner of the territory annexed to the District at the special election.

SECTION 3. Pursuant to the voter approval, the annexed territory is hereby declared to be fully annexed to and part of the District and this City Council may levy special taxes therein as heretofore provided in these proceedings.

SECTION 4. It is hereby found that all prior proceedings and actions taken by this City Council with respect to the District and the territory annexed thereto were valid and in conformity with the Act.

SECTION 5. Within 15 days of the date of adoption hereof, the Acting City Clerk shall execute and cause to be recorded in the office of the County Recorder of the County of Los Angeles, a Third Amendment to Amended and Restated Notice of Special Tax Lien, in substantially the form of Attachment B hereto.

SECTION 6. This Resolution shall take effect upon its adoption.

PASSED, APPROVED and ADOPTED this 15th day of November, 2023.

Laura Bettencourt, Mayor

Approved as to form:

William P. Curley III,
City Attorney

ATTEST:

Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing Resolution No. CC 2023-071 was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 15th day of November, 2023 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____ _____
Rochelle Scott, Acting City Clerk

16007.50:J19242
11/6/23

EXHIBIT A

CANVASS AND STATEMENT OF RESULT OF ELECTION
SPECIAL ANNEXATION ELECTION

CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

I hereby certify that on this date, I canvassed the returns of the election held on this date in the territory to be annexed to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch), and the total number of ballots cast in the territory to be annexed and the total number of votes cast for and against the measure are as follows and the totals as shown for and against the measure are full, true and correct:

	Qualified Eligible Votes	Votes Cast	YES	NO
City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) Annexation Election, November 15, 2023.	236	_____	_____	_____

BALLOT MEASURE: Shall the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District"), be authorized to levy special taxes within the territory annexed to the District pursuant to and as described in Resolution No. CC 2023-062, entitled "A Resolution of the City Council of the City of Palmdale of Intention to Annex Territory to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) and to Authorize the Levy of Special Taxes Therein" adopted by the Council of the City of Palmdale on October 18, 2023?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 15th day of November, 2023.

CITY OF PALMDALE

By: _____
Acting City Clerk,
City of Palmdale

EXHIBIT B

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

Acting City Clerk
City of Palmdale
38300 Sierra Highway, Suite C
Palmdale, California 93550

THIRD AMENDMENT TO
AMENDED AND RESTATED NOTICE OF SPECIAL TAX LIEN

CITY OF PALMDALE
COMMUNITY FACILITIES DISTRICT NO. 93-1
(RITTER RANCH)

Pursuant to the requirements of Section 3114.5 of the California Streets and Highways Code and the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 and following of the California Government Code (the "Act"), an Amended and Restated Notice of Special Tax Lien with respect to the City of Palmdale Community Facilities District No. 93-1 (Ritter Ranch) (the "District") was recorded in the Office of the County Recorder of the County of Los Angeles, State of California (the "County Recorder") on March 27, 2014 as Document No. 20140311807 (the "Original Notice"). On September 21, 2016, the Original Notice was amended by a First Amendment to Amended and Restated Notice of Special Tax Lien recorded in the Office of the County Recorder as Document No. 20161148547 (the "First Amendment"), to add to the facilities authorized to be financed by the District, as described in Exhibit A thereto. On _____, 2023, a Second Amendment to Amended and Restated Notice of Special Tax Lien was recorded in the Office of the County Recorder as Document No. ____ (the "Second Amendment") which provided notice of an alteration of the amended and restated rate and method of apportionment of special taxes for the District. Reference is hereby made to the Original Notice, the First Amendment and the Second Amendment, and the provisions of each thereof are by this referenced incorporated herein.

This Third Amendment to Amended and Restated Notice of Special Tax Lien further amends the Original Notice to add to the territory of the District. The assessor's tax parcel number(s) of all parcels or any portion thereof which are included in this Third Amendment to Amended and Restated Notice of Special Tax Lien, together with the name of the owner thereof, as they appear on the latest secured assessment roll as of the date of recording hereof or as are otherwise known to the City are as set forth in Attachment A hereto and by this referenced made a part hereof.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Director of Finance of the City of Palmdale, 38300 Sierra Highway, Suite D, Palmdale, California 93550, telephone number (661) 267-5440.

Dated: _____, 2023.

By: _____
Acting City Clerk,
City of Palmdale

ATTACHMENT A

ASSESSOR'S PARCEL NUMBERS AND OWNER OF LAND WITHIN TERRITORY ANNEXED TO CITY OF PALMDALE COMMUNITY FACILITIES DISTRICT NO. 93-1 (RITTER RANCH)

Assessor's Parcel Nos.	Name of Property Owners
3206-020-017 3206-026-005 3206-026-007 3206-027-002 3206-027-004 3206-027-005 3206-027-006 3206-027-007 3206-027-008 3206-027-009 3206-027-010 3206-027-012	RdR Development Holdings, LLC 2121 North Pearl Street, Suite 600 Dallas, Texas 75201

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT ECONOMIC DEVELOPMENT DIVISION**

DISTRICT: **DISTRICT 2**

SUBJECT: **APPROVE PURCHASE AND SALE AGREEMENT NO. A-8533 WITH RDR DEVELOPMENT HOLDINGS, LLC TO ACQUIRE 652 ACRES OF LAND FOR $10,800,000. (APNS: 3206-007-001; 3206-007-002; 3205-002-051; 3205-002-053; 3205-002-028; 3206-005-008 (PORTION); 3206-025-001; (PORTION); AND 3206-006-028 (PORTION) LOCATED IN VICINITY OF VINEYARD LANE AND ELIZABETH LAKE ROAD.**

ISSUE

Approve Purchase and Sale Agreement No. A-8533 with RdR Development Holdings, LLC to acquire 652 acres of land for $10,800,000. (APNs: 3206-007-001; 3206-007-002; 3205-002-051; 3205-002-053; 3205-002-028; 3206-005-008 (portion); 3206-025-001; (portion); and 3206-006-028 (portion) located in vicinity of Vineyard Lane and Elizabeth Lake Road.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve Purchase and Sale Agreement No. A-8533 (Agreement) with RdR Development Holdings, LLC (RdR) for $10,800,000; and
2. Authorize the City Manager or her designee to execute the Agreement, including minimal and/or non-substantiative changes, and associated documents pertaining to the real estate transaction.

BACKGROUND

Ritter Ranch, encompassing approximately 10,625-acres, is a master-planned development incorporating residential, open space, public facility, recreational, school, and commercial land uses. The Ritter Ranch property is located approximately four miles west of State Route 14; south of Elizabeth Lake Road; west of 30th Street West; north of the Sierra Pelona ridgeline; and east of Bouquet Canyon Road and the Angeles National Forest. The Ritter Ranch Specific Plan (RRSP) was approved in 1992 and provides for the ultimate development of approximately 7,200 single-family and multi-family homes.

However, as housing needs and development trends have changed, an amendment to the RRSP will be needed to allow different housing types to be built in the RRSP area.

On February 10, 2022, the Planning Commission approved a Planned Development (PD 21-001) to establish development and design standards for the initial 115-acre Phase 1A portion of the RRSP and approved six vesting tentative maps within PD 21-001 to subdivide the property for the construction of 553 single-family residences. The property owner is currently in the process of obtaining plan approvals and permits necessary to construct the first phase of homes. This includes grading plans, infrastructure improvement plans, recordation of final tract maps, and establishing a new Community Facilities District to fund offsite infrastructure improvements needed to support the project. Construction is also underway on utility improvements that were conditioned as part of the approval of Phase 1A along Elizabeth Lake Road and Avenue S.

DISCUSSION

The City has an opportunity to acquire 652 acres of vacant land (Property) in the RRSP area to facilitate the future development of much needed housing and to increase the number of miles of publicly accessible trails and acres of open space for the community. The noncontiguous properties are generally located south and north of Elizabeth Lake Road and east of Bouquet Canyon Road. Of the 652 acres, approximately 373 acres are designated for residential development, with the ability to accommodate a minimum of 520 residences. Roughly 273 acres are envisioned as open space, and six acres are designated for commercial use.

The acquisition of this Property would help the City advance its goal of providing 5.0 acres of parkland or open space per 1,000 residents. As specified in Palmdale 2045, the City's recently adopted General Plan Update, the City set specific goals and policies regarding open space and trails including:

- Goal PR-6.2: Provide a network of open space areas to provide for passive and active recreation opportunities, enhance the integrity of biological systems, and provide visual relief from the developed portions of the city.

- Goal PR-7: Maintain a system of multi-use trails that provide connections to regional trail systems and residential neighborhoods.

The open space is anticipated to include public trails that will connect to neighboring projects such as Ritter Ranch, Ana Verde Nuevo and Quail Valley to the east of the Ritter Ranch Specific Plan area, to create a massive public trail system in Palmdale. Once the Property sale is approved, the City will explore partnerships with open space conservancies like the Mountains Recreation and Conservation Authority to develop and manage the new open space area. The City will also work closely with Federal, State and County agencies to aggressively go after funding to construct new trails and provide trailheads with basic amenities.

A real estate appraisal was completed by the Dore Group in September 2023. The 652-acre site was appraised at $14,600,000. The market value of the Property is based on the land being free of any outstanding debts and liens, including any special taxes levied on the properties. Although the property was appraised at an amount higher than the purchase price, the seller recognizes that a significant investment in infrastructure improvements will be needed to develop the Property, therefore the seller agreed to reduce the purchase price to $10,800,000.

As part of the terms of the agreement, RdR will pay for the cost of amending the RRSP. RdR will work closely with the City to update development standards, lot sizes, zoning, allowable uses, and to provide more flexible development options within the specific plan area. This also includes undertaking the cost to hire consultants to perform environmental studies, surveys and reports needed to certify a new Environmental Impact Report.

FISCAL IMPACT

$10,800,000; plus, the standard costs associated with completing the real estate transaction. The City is working on a lease revenue bond, anticipated to be completed before the end of the calendar year, that will allocate the funds necessary to complete the transaction.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

A. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

E. Transform housing inventory to meet the changing lifestyle and market demands.

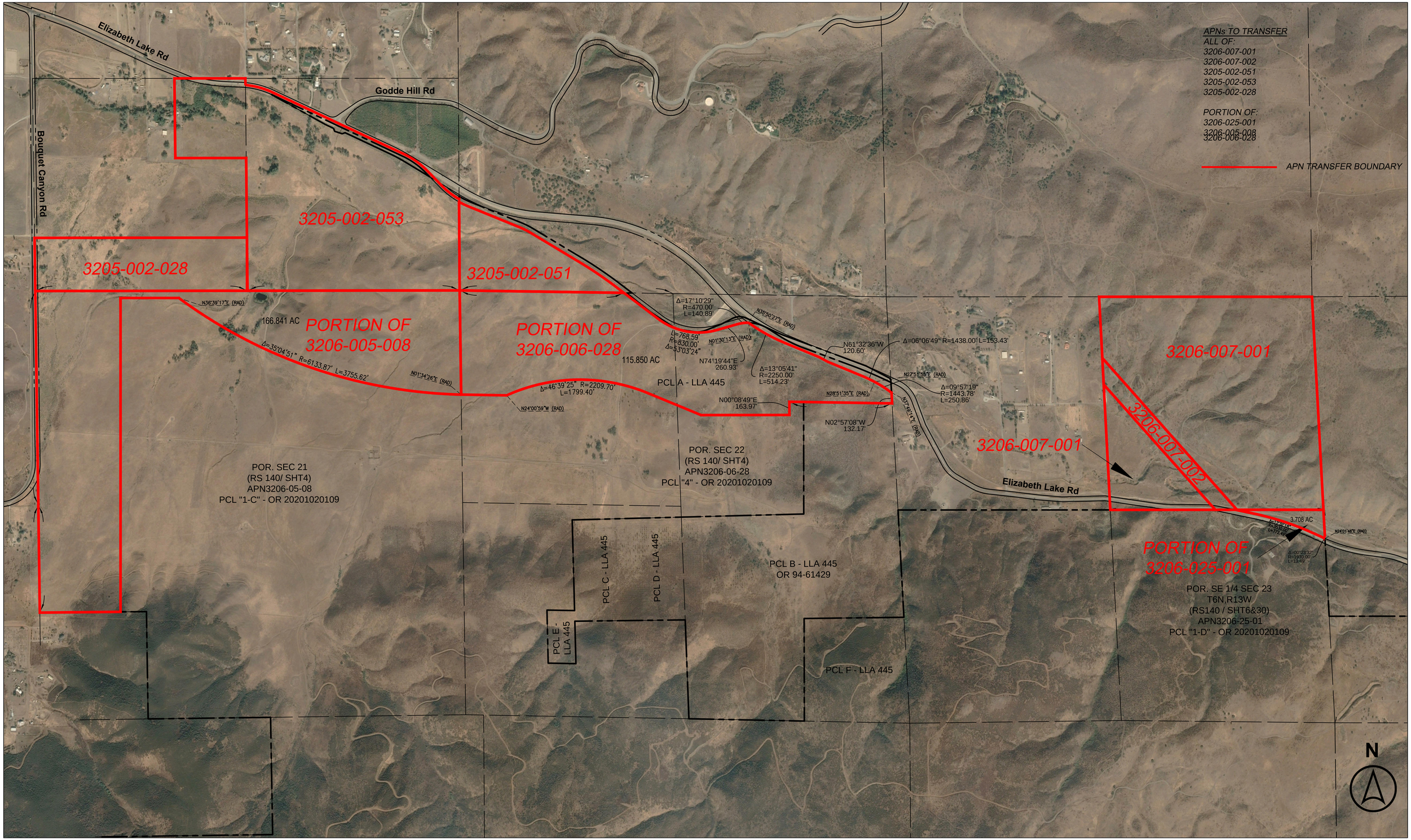
Prepared by:	Luis Garibay, Director of Economic and Community Development
Certified as to availability of Funds:	Janelle Samson, Director of Operations
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENT

1. Aerial Map
2. Agreement No. A-8533
3. Real Estate Appraisal Report

Attachment 1

Aerial Map



AERIAL SOURCE: GOOGLE MAPS (10/2020)

PURCHASE AND SALE AGREEMENT AND
ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Escrow Instructions (this "Agreement") dated this ___ day of _____, 2023, is entered into by and between the CITY OF PALMDALE ("CITY"), a California Charter City and municipal corporation), as "**Buyer**," and RdR Development Holdings, LLC ("RDR") as "**Seller**." City and RDR are referred to herein, collectively, as the "**Parties**."

RECITALS

A. RDR owns certain unimproved real property consisting of APN 3206-007-001; 3206-007-002; 3205-002-051; 3205-002-053; 3205-002-028; 3206-025-001 (portion); 3206-005-008 (portion); and 3206-006-028 (portion) that form approximately 652 acres, ("**Property**"), as generally depicted in Exhibit "A-1" attached hereto. The Property is now owned by RDR. The total Property will be assembled from multiple parcels and will be deemed to be a merchantable parcel upon final recordation of a subdivision map, approved by the CITY. The purchase and sale shall not close escrow until the subdivision map is final for all purposes.

B. The owner of real property located in the City adjacent to or near the Property ("**Public Benefits**") is contemplating developing the adjacent property for beneficial uses.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and RDR hereby agree as follows, and hereby instruct Escrow Holder as follows.

ARTICLE I

CITY PURCHASE OF PUBLIC BENEFIT PROPERTY

1.1. Sale and Purchase of Public Benefit Property. Subject to the terms and conditions set forth in this Agreement, including, but not limited to, RDR's financial and performance obligations set forth in Section 4.9 below, the City agrees to buy the Public Benefit Property from RDR and RDR agrees to sell the Public Benefit Property to the CITY.

1.2. Purchase Price. The total purchase price for (i) RDR's financial and performance obligations set forth in this Agreement, and (ii) the Public Benefit Property (collectively, the "**Purchased Assets**") shall be (the "**Purchase Price**") the amount of Ten Million Eight Hundred Thousand Dollars ($10,800,000). The parties acknowledge and agree that the Purchase Price for the Purchased Assets is for fair market value.

1.3. Opening of Escrow and Deposit. Within seven (7) days after the Opening of Escrow (as defined in Section 5.3 below), CITY shall deliver One Hundred Thousand Dollars ($100,000.00) in cash or other immediately available funds to the Escrow Holder as a deposit ("**Deposit**"). Escrow will open within seven (7) business days of CITY's receipt of the fully executed Agreement. Until the Close of Escrow (as defined in Section 5.4 below) or until Escrow

is terminated as herein provided, the Escrow Holder shall invest the Deposit in an interest-bearing account with interest accruing thereon for the account of the CITY. Concurrently with the expiration of the Inspection Review Period and provided CITY has not delivered the Disapproval Notice (as those terms are defined in Sections 3.2 and 3.4, respectively, below), the Deposit shall become non-refundable except as otherwise provided in this Agreement. If before the expiration of the Inspection Review Period, CITY has delivered the Disapproval Notice, this Agreement shall be automatically terminated and the Deposit, together with all interest accrued thereon, shall be returned to CITY. If this Agreement has not been so terminated, then, after the expiration of the Inspection Review Period, the Deposit, together with interest accrued thereon, shall be: (i) applied and credited toward payment of the Purchase Price at the Close of Escrow, or (ii) returned to CITY if the Close of Escrow does not occur, this Agreement is terminated, and the provisions of Sections 4.5 or 6.15 apply, or this Agreement is terminated because of a breach by CITY.

1.4. Condition of Public Benefit Property Title. At Closing, Seller shall convey to CITY good and marketable title in fee simple to the Public Benefit Property free and clear of any monetary encumbrances or liens, and subject only to all easements, restrictions, or covenants of record which do not interfere with City's proposed use and development of the Public Benefit Property, (the "**Permitted Exceptions**"), as set forth on the title insurance policy attached hereto as Attachment ____, issued on the parcel resulting from the subdivision mapping necessary to create the Property. After Close of Escrow, the City and Seller acknowledge and agree that the Parties will cooperate in good faith to establish for the benefit of Seller reasonable points of egress and ingress, utility easements and all other necessary development rights over and through the Public Benefit Property in order to facilitate development of Seller's adjoining property consistent with the requirements of the new Ritter Ranch Specific Plan as contemplated in Section 4.9.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of RDR as Seller are True and Correct. RDR hereby represents and warrants to CITY that the following facts are true and correct as of the date hereof and as of the Closing Date (as defined in Section 5.4 below). The truth and accuracy of the following representations and warranties shall constitute a condition precedent to the Close of Escrow for the benefit of CITY. These representations and warranties shall survive the Close of Escrow and the recording of the Grant Deed for sixty (60) days and shall not be deemed merged into the Grant Deed upon its recordation.

(a) Power and Authority. CITY and RDR represent and warrant each other and have the legal power, right, and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated hereby. All consents, approvals, and authorizations necessary for the execution of this Agreement and the consummation of the transactions contemplated herein by CITY and RDR have been or will be obtained by the Close of Escrow. The individuals executing this Agreement and the instruments referenced herein on behalf of the CITY and RDR have the legal power, right, and actual authority to bind their party to the terms and conditions hereof and thereof. Furthermore, RDR warrants that it has good and marketable title to the Public Benefits Property, after the completion of the mandatory subdivision map prepared by RDR to define the Property.

(b) Requisite Action. All requisite action has been and will be taken by CITY and RDR in connection with the entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(c) Validity. This Agreement and all documents required hereby to be executed by CITY and RDR are and shall be valid, legally binding obligations of and enforceable against CITY and RDR in accordance with their terms subject only to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally. Neither the execution and delivery of this Agreement and documents referenced herein, nor the consummation of the transactions contemplated herein, conflict with or result in the material breach of any terms or provisions of any contract, loan, or other agreement or instrument to which RDR is a Party or affecting the Purchased Assets, including the Public Benefit Property. RDR has not sold, conveyed or entered into any contract for the sale of all or any portion of the Public Benefit Property or any rights incident thereto, nor do there exist any rights of first refusal or options to purchase the Public Benefit Property or any rights incident thereto.

(d) Recitals. The information contained in the Recitals and this Agreement is true and correct and incorporated in this Agreement.

(e) Lawsuits & Claims. To each party's actual knowledge, without any duty of inquiry or investigation, there are no pending actions, lawsuits, claims, or judicial, municipal, or administrative proceedings affecting all or any portion of the Public Benefit Property or in which CITY is a Party by reason of the Public Benefit's Property prior ownership or CITY's present ownership of the Public Benefit Property. To Seller's knowledge, there are no threatened or contemplated actions, lawsuits, claims, or proceedings nor the existence of any facts which might give rise to such actions, lawsuits, claims, or proceedings. During the Escrow period, the RDR will not commence or defend any action with respect to the Public Benefit Property except upon such terms as are mutually acceptable to CITY and City.

(f) Compliance with Laws. Seller has not received notice of any violation of applicable governmental regulations relating to the Public Benefit Property, any existing or contemplated plan to widen or modify any street or highway contiguous to the Public Benefit Property, or any other plan, study, or effort of any applicable governmental authorities relating to the Public Benefit Property.

(g) Taxes and Assessments. Seller has provided to CITY all relevant information in its possession concerning real property taxes and any special assessments or bonds that may be levied against the Public Benefit Property because of any existing public improvements or work, activities, or improvements done to the Public Benefit Property by CITY.

(h) Hazardous Materials. To the best of RDR's knowledge, all operations or activities upon, or use or occupancy of the Public Benefit Property by CITY or any current occupant or user thereof are in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of any toxic or hazardous substances, materials or wastes, including, without

limitation, any hazardous material (as such terms are commonly defined or employed in accordance with applicable federal, state or local laws, codes, ordinances, rules and regulations). To present actual knowledge without a reasonable duty of inquiry or investigation, there is not present upon the Public Benefit Property, or on any portion thereof, underground storage tanks, any hazardous material or any structures, fixtures, equipment or other objects or materials containing any hazardous material in violation of any applicable environmental law.

(i) Lease and Contracts. There are no oral or written leases, subleases, licenses, occupancies, or tenancies in effect about the Public Benefit Property, and no persons or entities occupy or have the right to occupy or use all or any portion of the Public Benefit Property. To RDR actual knowledge, except as disclosed in Exhibit "C" attached hereto, there are no service or maintenance contracts, warranties, guarantees, bonds, insurance policies, or other agreements (whether oral or written) that will affect or be obligations of CITY or the Public Benefit Property after the Close of Escrow. RDR has no knowledge of and has neither given nor received any written notice of default with respect to any of the contracts or other agreements set forth on Exhibit "C" attached hereto. At the Close of Escrow, Seller shall deliver possession of the Public Benefit Property to the CITY, free of actual occupancy and any right of occupancy by any third party or Party.

(j) Change. Seller shall promptly notify CITY of any material adverse change in any condition with respect to the Public Benefit Property or of any event or circumstance which makes any representation or warranty of RDR under this Agreement untrue or any covenant of Seller under this Agreement incapable or less likely of being performed, it being understood that City's obligation to provide notice to CITY shall in no way relieve City of any liability for a breach by City of any of its representations, warranties or covenants under this Agreement.

(k) General Representation. No representation, warranty, or statement of RDR as Seller in this Agreement or in any document, certificate of schedule prepared by RDR as Seller and to be furnished to CITY pursuant to the terms of this Agreement contains any untrue statement of material fact.

2.2. Representations of CITY as Buyer. CITY validly exists as a California Charter City and municipal corporation limited liability company and has performed all acts and obtained all approvals and consents, in each case as necessary to offer to purchase and to purchase the Public Benefit Property. CITY has the full authority and power to comply with all of its obligations set forth in this Agreement.

ARTICLE III

COVENANTS OF CITY AND CITY INSPECTION PERIOD

3.1. License to Enter Public Benefit Property. RDR hereby agrees that CITY and/or its agents, representatives, contractors, and subcontractors may, following the Opening of Escrow and before the Closing Date, conduct its own reasonable engineering studies, environmental assessment, soil and compaction tests and other tests and studies on the Public Benefit Property provided that CITY shall be responsible for any damage caused thereby. CITY shall be responsible for any liability, cost, claim, damage, or injury caused by such entry and shall keep the Public

Benefit Property free of any and all liens arising therefrom. CITY shall indemnify and hold RDR harmless and defend RDR from and against such liability, loss, judgment, cost, claim, damage or injury, including but not limited to attorneys' fees and costs, arising out of or in connection with entry or testing on the Public Benefit Property by CITY or its agents, representatives, contractors or subcontractors; provided, however, such indemnification obligation shall not apply to CITY's mere discovery of any pre-existing adverse physical or environmental condition at the Public Benefits Property.

3.2. Inspection Review Period for the Public Benefit Property. CITY shall have a maximum period of ninety (90) days following the Opening of Escrow and CITY's receipt of the Due Diligence Items (as defined below) (the "**Inspection Review Period**"), to review and investigate the Due Diligence Items, the physical and environmental condition of the Public Benefits Property, the character, quality, value and general utility of the Public Benefit Property, the zoning, land use, environmental and building requirements and restrictions applicable to the Public Benefit Property, the state of title to the Public Benefit Property factors or matters relevant to CITY's decision to purchase the Public Benefit Property. CITY, in CITY's sole and absolute discretion, may determine whether or not the Public Benefit Property is acceptable to CITY within the Inspection Review Period. As soon as practicable after the Opening of Escrow, but in no event more than ten (10) days after the Opening of Escrow, RDR shall provide CITY with the "**Due Diligence Items**", to the extent in RDR's possession, including, without limitation, the following:

1) Preliminary Title Report and related documents.
2) Hazardous Substance Condition Report, if any.
3) All available property information not already in the City's possession.
4) Zoning, development restrictions, and matters of record.
5) Size and description of the property; both current and assembled Property.
6) Engineering Plans, if any.
7) All insurance policies on the property.
8) Copy of recent tax and utility bills on the property.
9) Biological Assessments, if any.
10) Geotechnical Report, if any.
11) Vector Reports, if any.

Additionally, any or all items requested above that are in RDR possession shall be submitted to CITY for its review as soon as practicable after the Opening of Escrow. RDR shall also deliver reliance letters to CITY from each of the consultants who have produced any third-party reports referenced above.

Within thirty [30] days after the opening of escrow, Seller shall deliver to the City and the Title Company a metes and bounds legal description of the Public Benefit Property, which shall supersede and replace Exhibit "A-1" to this Agreement and the new proposed subdivision map assembling all Public Benefit Property.

3.3. Public Benefit Property Condition. CITY shall inspect the Public Benefit Property and the Due Diligence Items during the Inspection Review Period. Should CITY determine any defects in title, to the Public Benefit Property Seller, at its election, may agree to provide a credit against the Purchase Price in an amount sufficient to remove any such defects identified by CITY.

3.4. Approval Notice. If CITY delivers written notice to Seller and Escrow Holder prior to the expiration of the Inspection Review Period of CITY approval of the Public Benefit Property and condition of title (the "**Approval Notice**"), then the Public Benefit Property will be sold "As-Is" with RDR making no additional representations or warranties concerning the Public Benefit Property (except for those representations and warranties provided under Section 2.1, which shall be true and correct as of the Closing Date) and with any appropriate credit against the Purchase Price sufficient to repair any defects as provided under Section 3.3 above. If CITY fails to deliver an Approval Notice prior to the expiration of the Inspection Period, CITY shall be deemed to have disapproved the Public Benefit Property and this Agreement shall automatically terminate and the Deposit and all interest accrued thereon shall be refunded to CITY.

ARTICLE IV

SEPARATE OBLIGATIONS OF RDR AND OF CITY; CONDITIONS PRECEDENT; DEFAULT

4.1. Certain Obligations of CITY as Buyer.

(a) In addition to any other obligations contained in this Agreement, CITY shall have deposited the Deposit into Escrow as required pursuant to Section 1.3.

(b) Not later than one (1) business day prior to the Closing Date, as defined by the City's Agreement to the subdivision map creating the Project is final and recorded. CITY shall deposit into Escrow the balance of the Purchase Price (less the Deposit) and all other sums and documents required by the Escrow Holder to be deposited by CITY to carry out this Escrow.

4.2. Certain Obligations of RDR as Seller.

(a) To the extent required by the Title Company in order to issue the Title Policy (as defined in Section 5.5 below), RDR shall take all necessary actions to secure ratification of the City's sale and conveyance of the various portions of the Public Benefit Property to CITY.

4.3. Conditions Precedent to RDR Obligation to Sell. RDR obligation to sell the Public Benefit Property is expressly conditioned upon each of the following, for the benefit of RDR, any of which may be waived in writing by RDR:

(a) CITY shall have deposited with Escrow Holder all sums and documents required pursuant to Section 4.1 above and otherwise paid any fees and costs required by this Agreement.

(b) CITY shall have timely performed each obligation and covenant which are required to be performed prior to the Closing Date as established in this Agreement.

(c) All representations and warranties of CITY hereunder shall be true and correct in all material respects as of the Closing Date, as if may on and as of the Closing Date.

4.4. Conditions Precedent to CITY's Obligations. CITY's obligation to buy the Public Benefit Property is expressly conditioned upon each of the following, for the benefit of CITY, any of which may be waived in writing by CITY in its sole discretion:

(a) City shall have deposited with Escrow Holder all sums and documents required pursuant to Section 4.2 above.

(b) City shall have timely performed each obligation and covenant of City required pursuant to this Agreement.

(c) On or before the Close of Escrow, Title Company shall have committed to issue to CITY the Title Policy in a form acceptable to the CITY for the Property, as resulting from RDR's subdivision map process containing eight (8) parcels, in full or part, into and creating the Property.

(d) All representations and warranties of RDR hereunder shall be true and correct in all material respects as of the Closing Date, as if may on and as of the Closing Date.

(e) No material adverse change shall have occurred to the condition of the Public Benefit Property or the improvements thereon.

4.5. Failure of Conditions Precedent to CITY's Obligations. CITY's obligations with respect to the transactions contemplated by this Agreement are subject to the satisfaction of the condition's precedent to such obligations for CITY's benefit set forth in Section 4.4 above. If CITY delivers the Disapproval Notice or if CITY terminates this Agreement by notice to Seller because of the failure of such condition precedent, then Escrow Holder shall return the Deposit to CITY (including any interest accrued thereon) in accordance with CITY's written instructions within five (5) business days following CITY's delivery of a written termination notice to Seller and Escrow Holder, CITY shall pay one-half (½) of any Escrow cancellation fees or charges, and except for any party's indemnity obligations under the Agreement which expressly survive termination of the Agreement, the Parties shall have no further rights or obligations to one another under this Agreement.

4.6. Default; Cure. Time is of the essence in this Agreement and if CITY (the "**Defaulting Party**") fails to deposit any of the amounts due pursuant to this Agreement, or to perform any other act when due, then the other Party (the "**Non-Defaulting Party**") may initiate any of its rights under this Agreement, or available at law or in equity, by notice in writing to the Defaulting Party and Escrow Holder. Should CITY default, RDR shall be entitled to retain the Deposit as liquidated damages pursuant to Section 4.8 below. Except as provided in Section 4.5 above, if the Defaulting Party has not fully cured the default within seven (7) calendar days after receipt of said notice (or if such 7-day period would extend beyond the Closing Date, then by the Closing Date) by the Defaulting Party, Escrow Holder may be instructed by the Non-Defaulting Party to cancel this Escrow and the Non-Defaulting Party shall thereupon be released from its obligations under this Agreement.

4.7. LIQUIDATED DAMAGES. IN THE EVENT THE CLOSE OF ESCROW AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DO NOT OCCUR AS HEREIN PROVIDED BY REASON OF A DEFAULT OF EITHER PARTY, AND THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES THAT EITHER PARTY MAY SUFFER. THEREFORE, RDR AND CITY HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT EITHER PARTY WOULD SUFFER IN THE EVENT THAT EITHER PARTY DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PUBLIC BENEFIT PROPERTY IS AND SHALL BE, AS THE NON DEFAULTING PARTY'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), THE DEPOSIT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY EITHER PARTY, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY THE NON DEFAULTING PARTY. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. EACH PARTY HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.

_____	_____
CITY'S INITIALS	RDR INITIALS

4.8. CITY's Remedies. The Parties agree that if the sale contemplated by this Agreement is not completed as herein provided solely by reason of any material default of RDR, then in addition to the return of the Deposit and all interest accrued thereon, CITY shall have the right to pursue any remedy available at law or in equity for such default of RDR, including, without limitation, the specific performance of this Agreement.

4.9 Special Duties and Obligations of RDR and CITY. In addition to the obligations in this Agreement, each Party has a specific condition precedent that must be completed or commenced to a degree reasonably satisfactory to the other Party. Some obligations may not be complete until after the Close of Escrow but the obligations to complete obligations shall survive the Close of Escrow and be enforceable pursuant to the terms of this Agreement.

CITY:

a). CITY agrees to conditionally defer CITY imposed development fees (to be agreed upon at the time of payment) equal in dollar amount to the monies to be paid by the Anaverde Nuevo Development (adjacent to RDR's Ritter Ranch development). The deferred monies shall be due and payable to the CITY in full, or on, or before _____.

(b) Use its best efforts to cooperate and expedite the issuance of the Community Facilities District Bonds, as related to the issuance referenced as CFD-2022-3.

RDR:

a). RDR completes and achieves at its own sole cost, a subdivision map that forms the Property.

b). Remove, to the CITY's satisfaction, any CITY liability or duly to make payment, in full or part, of any type or nature, on any bonds encumbering the Property, and have the title insurance policy clearly reflect this removal.

c). Amend all community facilities district documents, including maps, to exclude the CITY, unless CITY agrees to an alternate proposal. Any such alternate proposal, if accepted by CITY must be memorialized in writing and attached to this Agreement.

d). Land use entitlement modifications, substitutions, and related actions: RDR shall, at its own sole cost and expense, commence and complete, including but not limited to, all required environmental studies, engineering and planning actions involving updating or superseding with a new specific plan the existing Ritter Ranch Specific Plan, including the Property.

e). Satisfy at its own sole cost and expense, the other requirements imposed by the Ritter Ranch Specific Plan, with respect to all Phase 1A entitlements and the completion of conditions and entitlements of Phase 1B maps and Development approvals.

f). Design and construct the public water pump station that will permit the construction of residential units within Phase 1A and Phase 1B of the Ritter Ranch Specific Plan.

ARTICLE V

ESCROW

5.1. City termination of purchase without liability or obligation to RDR. Notwithstanding anything contrary in this Agreement, RDR and City agree that further engineering, land use, and hydrologic analysis may determine that the Public Benefit Property is unnecessary or undesirable for its expected use by City. Prior to the advance of the sale of the Public Benefit Property by the opening of escrow, and as provided in Section 5.3 of this Agreement, the City, in its sole discretion, shall determine if it can provide necessary and desirable water to support Phase 1A and 1B of the Ritter Ranch Specific Plan without the need to acquire by purchase the Public Benefit Property from RDR, by any other lawful means as decided by the City, which may include infrastructure, contribution to funding of Party's or third parties (not yet identified) or any other comparable means by which City's obligations can be satisfied. If the City so determines, it shall provide written notice to RDR, and the Parties agree that this Agreement shall be deemed to be immediately terminated, with each Party bearing its own costs and expenses related to this agreement without contribution, reimbursement, or any consideration of any type or nature due from either Party to the other.

5.2. Agreement to Constitute Escrow Instructions. This Agreement and any General Provisions of Escrow Holder (the "General Provisions") collectively shall constitute escrow instructions. A copy hereof shall be deposited with Escrow Holder for this purpose. In the event

of any inconsistency between the terms of the General Provisions and this Agreement, the provisions of this Agreement shall prevail to the extent of any such inconsistency.

5.3. Escrow Holder. The escrow for the Public Benefit Property ("**Escrow**") shall be with the Title Insurance Company ("**Escrow Holder**").

5.4. Opening of Escrow. Escrow shall open on the date which is seven (7) days after a copy of this Agreement, properly executed by the Parties hereto, has been deposited with Escrow Holder (the "**Opening of Escrow**"), which copy the Parties hereto agree shall be delivered to Escrow Holder immediately following execution. Escrow Holder shall notify the Parties immediately, by email notice and written notice delivered by prepared first class U.S. postage, upon receipt of a copy of this Agreement as so executed as to the date of the Opening of Escrow.

5.5. Due Diligence. After the Opening of Escrow, City shall have a 90-business day due diligence period to assess the obligations in Section 5.0.

5.6. Close of Escrow. The closing shall occur thirty (30) days after CITY's approval or as may be agreed upon in writing by the Parties. For purposes of this Agreement, the terms "Closing Date", "Closing" and "Close of Escrow" mean the date on which the Closing occurs, and the term "Closing" means the recordation of the Grant Deed.

5.7. Title Policy. Escrow Holder is hereby instructed to deliver to CITY through Escrow ALTA standard coverage owner's policy of title insurance from _____Title Insurance Company ("**Title Company**") dated the date and time of Closing with liability in the amount of the Purchase Price (the "**Title Policy**"). The Title Policy shall insure CITY, as owners of good, marketable, and indefeasible fee title to the Public Benefit Property subject only to (a) the standard printed title company exceptions and (b) the Permitted Exceptions and any other exceptions approved by or created by CITY.

5.8. Recordation of the Grant Deed and Delivery of Funds. Upon receipt of the documents and sums described in Sections 4.1, 4.2, and 4.9 and this Article V, the Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Los Angeles County, California, and shall deliver the proceeds of the Escrow less appropriate charges to "_____." A conformed copy of the recorded Grant Deed shall be delivered to CITY immediately following the Closing. All sums to be disbursed to any party by the Escrow Holder shall be by certified or cashier's check of the Escrow Holder or by wire transfer if the Party so advises Escrow Holder.

5.9. Prorations. Real property taxes and any other assessment payment shall be prorated as of the Close of Escrow and CITY shall take the Property without any tax lien or liability of any type or nature.

5.10. Costs of Escrow.

(a) CITY shall pay (i) one-half (1/2) of the Escrow Holder's fee and (ii) the cost of any title insurance coverage or endorsements in excess of the ALTA standard coverage owner's policy of title insurance.

(b) RDR as Seller, shall pay (i) one-half (1/2) of the Escrow Holder's fee, (ii) the recording fee for the Grant Deed, (iii) the cost of the ALTA standard coverage owner's policy of title insurance, and (iv) all documentary transfer taxes, if applicable.

5.11. Broker's Commission. CITY and RDR each represent that a broker did not represent it in connection with this transaction and each Party hereby agrees to indemnify the other Party from any claims, damage, or expense for any and all commission fees.

5.12. Statement of CITY and RDR Concerning Executory Terms and Close of Escrow. CITY and RDR each acknowledge that the consummation of the Escrow is contingent upon compliance with some or all of the executory terms and provisions of this Agreement and that the Parties hereto are the sole persons or entities entitled and authorized to determine whether all executory terms and provisions required to be performed prior to the close of Escrow have been satisfied or deemed satisfied prior to the close of the Escrow. Accordingly, prior to the Closing Date, CITY and RDR shall each deposit with Escrow Holder a written statement acknowledging that all executory terms and provisions of this Agreement, insofar as the same relate to each Party respectively and any obligation of Escrow Holder relating thereto, have been satisfied, deemed satisfied or waived. Deposit of such statement with the Escrow Holder shall constitute each Party's authorization to close Escrow.

5.13. Termination of Agreement. Except as otherwise expressly provided herein, in the case of termination of this Agreement in accordance with its terms and cancellation of the Escrow, all documents and funds (together with any interest accrued thereon) previously deposited into the Escrow shall be promptly returned to the depositing Party by the person or entity then holding such documents and funds, and all rights and obligations of the Parties existing hereunder shall thereafter terminate and be of no further force and effect.

5.14. Escrow Cancellation Charges. In the event that this Escrow shall fail to close by reason of the default of any Party hereunder, the defaulting Party or Parties shall be liable for all Escrow cancellation charges. In the event that the Escrow shall fail to close for any other reason, each Party shall be liable for one-half (1/2) of all Escrow cancellation charges.

5.15. Delay in Closing; Authority to Close. If Escrow Holder cannot close this Escrow on or before the Closing Date, it will, nevertheless, close the same when all conditions have been satisfied or waived, notwithstanding that one or more of such conditions has not been timely performed, unless after the Closing Date and prior to the Close of the Escrow, Escrow Holder receives a written notice to terminate the Escrow and this Agreement from a Party who, at the time such notice is delivered, is not in default hereunder. The exercise of such right, and the return of moneys and documents, shall not affect the right of the permitted in this Agreement for the other Party's breach of this Agreement. In addition, the giving of such notice, the failure to object to termination of the Escrow or the return of moneys and documents shall not affect the right of the other Party or Parties to pursue other remedies permitted hereunder for the breach of the Party who gives such notice.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1. Attorneys' Fees. In any legal proceeding between CITY and RDR seeking enforcement of or attempting to construe any of the terms and provisions of this Agreement, or in connection with any of the property described herein, including, without limitation, insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing Party in such action shall be awarded, in addition to damages, injunctive or other relief; its reasonable costs and expenses, including, without limitation, service of process, filing fees, court and court reporter costs, investigation costs, expert witness fees and the cost of any bonds, and reasonable attorneys' fee.

6.2. Notices. All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand delivery or professional messenger service) to either Party or may be sent by registered or certified mail, with postage prepaid, return receipt requested or delivered by Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid, addressed as follows (telephone numbers and email addresses have been provided for convenience only):

If to City at:

Ronda Perez, City Manager
City of Palmdale
38300 Sierra Highway, Suite A
Palmdale, California 93550
Telephone: (661) 267-5177
Email: rperez@cityofpalmdale.org

William P. Curley III, Special Counsel
Harper & Burn LLP
453 S. Glassell Street
Orange, California 92866
Telephone: (714) 771-7729
Email: wcurley@harperburns.com

If to RdR at:

John Dinan, Secretary and General Counsel
RdR Development Holdings, LLC
2121 N. Pearl St., Suite 600
Dallas, TX 75201
Telephone: (214) 389-0833
Email: jdinan@phccap.com

If to Escrow Holder at:

Escrow Company
Attention:
Telephone:
Email:

If to Title Company at:

Title Insurance Company
Attention:
Telephone:
Email:

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed in Los Angeles, Orange, San Bernardino, or Los Angeles Counties with postage prepaid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. Any notice or other document sent in any other manner shall be effective only upon actual receipt thereof. Any Party may change its address for purposes of this Section by giving notice to the other Party and to the Escrow Holder as herein provided.

6.3. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto and their respective successors and permitted assigns.

6.4. Assignment. This Agreement may not be assigned by either party without the express written consent of the other party first had and obtained. Any assignment of delegation of rights, duties, or obligations hereunder made without the prior written consent of the other Party or Parties hereto shall be void and of no effect. No such assignment shall be deemed to relieve the assigning Party from any liability or responsibility hereunder.

6.5. Relationship of Parties. The relationship of the Parties to this Agreement shall be solely that of CITY, in its capacity as buyer of the Public Benefit Property; and RDR as Seller of the Public Benefit Property, and nothing herein contained shall be construed otherwise.

6.6. Governing Law. This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the internal laws of the State of California with venue, for any action being in the State of California or Federal court with jurisdiction over the City of Palmdale, California.

6.7. Entire Agreement; Agreement. This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waived, amended, or added to except if in writing and signed by the Party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

6.8. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Parties may require.

6.9. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

6.10. Severability. If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void, against public policy, or otherwise unenforceable, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

6.11. Waiver. The waiver of any breach of any provision hereunder by City or CITY shall not be deemed to be a waiver of any preceding or subsequent breach hereunder. No failure or delay of any Party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof.

6.12. Further Assurances. CITY and RDR each agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require consummating, evidence, or confirm the sale or any other agreement contained herein in the manner contemplated hereby.

6.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which when taken together shall constitute one and the same instrument.

6.14. Time of Essence. Time is of the essence in this Agreement as to all dates and time periods set forth herein.

6.15. Eminent Domain Proceedings. The Parties shall promptly notify the other Party of any condemnation proceeding commenced prior to the Close of Escrow. If any such proceeding relates to or may result in the loss of any material portion of the Public Benefit Property, CITY may, at its sole option, elect either to (i) terminate this Agreement, in which event all funds deposited (including all interest accrued thereon) into Escrow by CITY or released to RDR shall be returned to CITY, all instruments shall be returned to the respective Parties who deposited the same, and neither Party shall have any further rights or obligations hereunder except as provided in Section 5.11, or (ii) continue the Agreement in effect, in which event upon the Close of Escrow, CITY, as buyer, shall be entitled to any compensation, awards, or other payments or relief resulting from such casualty or condemnation proceeding.

6.16. Actual Knowledge. For purposes of this Agreement, "actual knowledge" for RDR shall mean the current, actual (as opposed to constructive, imputed, or implied) knowledge of Secretary and General Counsel. "Actual knowledge" for CITY, shall mean the current, actual (as opposed to constructive, imputed, or implied) knowledge of the City Manager.

6.17. No Third-Party Beneficiaries. This Agreement is not intended to create any third-party beneficiaries, and the execution and delivery of this Agreement shall not be deemed to confer

any rights upon, nor obligate any of the Parties to any person or entity other than the Parties. Additionally, no third party may enforce the terms of this Agreement.

6.18. Force Majeure. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or failures to perform are due to the elements, fire, earthquakes or other acts of God, strikes, labor disputes, lockouts, acts of the public enemy, riots, insurrections, or governmental restrictions imposed or mandated by other governmental entities, or litigation filed by anyone which may impair the ability of the Parties to satisfy their respective obligations created in this Agreement. CITY and RDR may also extend times of performance under this Agreement in writing, if agreed to by all of the Parties.

6.19. Recitals. The provisions of the recitals of this Agreement shall constitute operative and enforceable provisions of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE

_____
Ronda Perez
City Manager

Dated: _____

RDR DEVELOPMENT HOLDINGS, LLC

_____
John Dinan
Secretary and General Counsel

Dated: _____

APPROVE AS TO FORM:

_____
William P. Curley, III
City Attorney

ATTEST:

_____
Roxanne Faber
Acting City Clerk

EXHIBIT "A-1"

DEPICTION OF PUBLIC BENEFIT PROPERTY

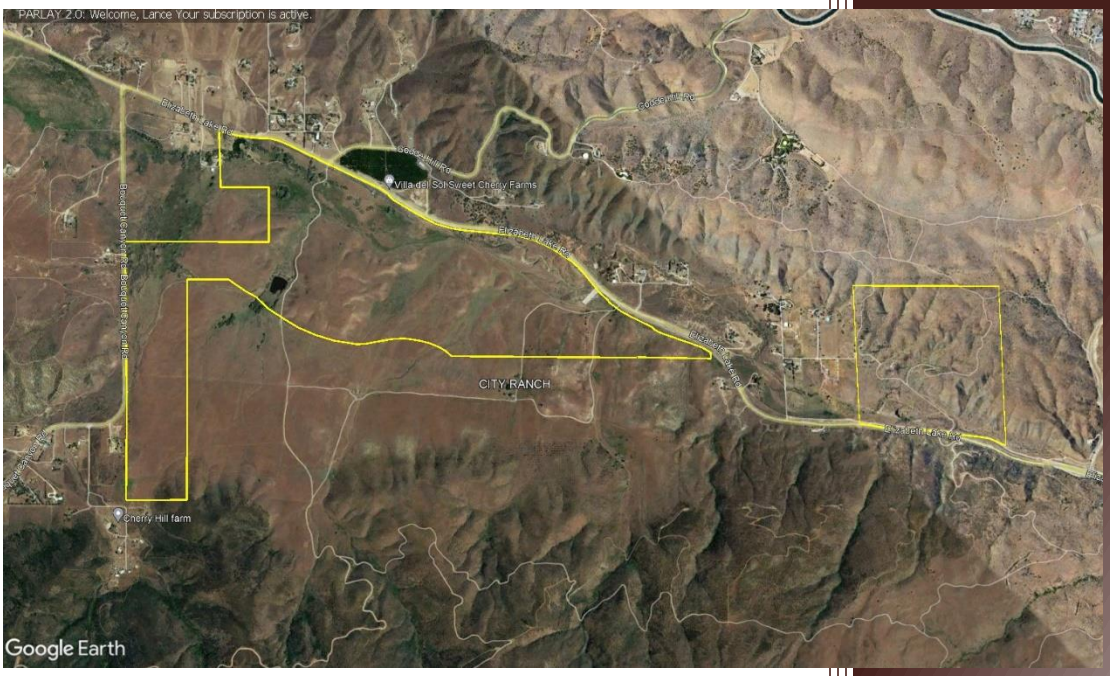
[To be inserted]

Attachment 3

THE DORÉ GROUP
INTERNATIONAL REAL ESTATE CONSULTATION
AND FORENSIC VALUATION

Real Estate Appraisal Report

520 Residential Lots – Ritter Ranch



Prepared For:

John Dinan and Fernando Dutra
RdR Co, Inc.
2121 N. Pearl Street, Suite 600
Dallas, Texas 75201

THE DORÉ GROUP

INTERNATIONAL REAL ESTATE CONSULTATION
AND FORENSIC VALUATION

September 5, 2023

John Dinan and Fernando Dutra
RdR Co, Inc.
2121 N. Pearl Street, Suite 600
Dallas, Texas 75201

Re: Real Estate Appraisal Report
520 Residential Lots – Ritter Ranch
South and North of Elizabeth Lake Road, East of Bouquet Canyon Road
Los Angeles County, California 93551

File Name: TDG 2023 102

Dear Mr. Dinan and Dutra,

Pursuant to your request, I performed an appraisal of the above referenced property as more particularly described in the appraisal report to follow. More specifically, the subject property is a portion of an approved planned residential subdivision known as Ritter Ranch. Located along Elizabeth Lake Road, 4.75 miles west of Highway 14 in Palmdale, in North Los Angeles County, the subject portion of Ritter Ranch features +/- 652.00 gross acres of non-contiguous land with SP (Specific Plan) land uses. The subject is a portion of Ritter Ranch, which was approved in February 1992 includes a total of 10,625 acres with a residential mix of approximately 7,200 units, open space, community parks, golf course, schools, commercial, and roadways.

The portions that are the subject of this appraisal include 490 acres within Planning Area 1 (portion), as well as all of Planning Area 3 (159 acres). The subject portions included in this appraisal are part of a transfer plan (see Transfer Site Plan) and include a total of 520 residential units and six acres of commercial. As of the writing of this report, the subject lands are in a vacant, raw state and would require infrastructure in place to begin development. Please note, the commercial acreage has limited contribution to the overall residential land value and is included in our overall analysis.

The report was prepared for RdR Development Holdings, LLC and related parties and is intended only for their specified use. Other users may include the City of Palmdale and may be subject to outside agency review. It may not be distributed to or relied upon by other persons or entities without the written permission of The Doré Group. The intended use is to provide market value.

This appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (U.S.P.A.P.) and the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute.

Your attention is directed to the Hypothetical Conditions, Extraordinary Assumptions, and General Conditions and Assumptions sections of this report (beginning on page 10). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, I note the following:

Hypothetical Conditions:

- There are no hypothetical conditions for this appraisal.

Extraordinary Assumptions:

- I have assumed that the development of 520 units between Planning Areas 1 (portion) and 3 is approved for development as identified.

Please reference page 14 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, highest and best use analysis and valuation methodology.

I certify that I have no present or contemplated future interest in the property beyond this estimate of value. I have not performed services, as appraiser, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Based on the appraisal described in the accompanying report, subject to the Hypothetical Conditions, Extraordinary Assumptions, and General Conditions & Assumptions, I have made the following value conclusion(s):

Bulk Market Value

TOTAL VALUE: $14,600,000

PER UNIT (RD.): $27,990

The market exposure time[1] preceding August 1, 2023, would have been 12 months and the estimated marketing period[2] as of August 1, 2023, is 12 months.

Thank you for the opportunity of submitting this appraisal. If I can be of further service, please do not hesitate to call.

Respectfully submitted,
The Doré Group, Inc.

Lance W. Doré, MAI, FRICS
President / CEO
California-AG 002464
lwdore@thedoregroup.com

[1] Exposure Time: see definition in the Addenda.

[2] Marketing Time: see definition in the Addenda.

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SUMMARY OF SALIENT FACTS & CONCLUSIONS

GENERAL

SUBJECT: 520 Residential Lots / Six Acres Commercial - Ritter Ranch
South and North of Elizabeth Lake Road, East of Bouquet Canyon Road
Los Angeles County, California 93551

OWNER: RdR Development Holdings, LLC

LEGAL DESCRIPTION: Lengthy, retained in my files

ASSESSOR PARCEL NUMBER:

ASSESSOR PARCEL NUMBERS		
APN	Planning Area	Acres
3206-007-001	3	149.46
3206-007-002	3	10.53
3205-002-053	1	138.24
3205-002-028	1	40
3206-005-008 (portion)	1	156.84
3206-006-028 (portion)	1	126.26
3206-025-001 (portion)	1	3.14
3205-002-051	1	27.53
	Total	**652.00**

Please note, gross acreage was used within this analysis.

DATE OF VALUE: August 1, 2023

DATE OF REPORT: September 5, 2023

INTENDED USE: The intended use is to determine market value.

INTENDED USER(S): RdR Development Holdings, LLC. Other intended users include the City of Palmdale and may be subject to outside agency review. It may not be distributed to or relied upon by other persons or agencies without written permission of The Doré Group.

PROPERTY RIGHTS: Fee Simple

HYPOTHETICAL CONDITIONS: There are no hypothetical conditions for this appraisal.

EXTRAORDINARY ASSUMPTIONS:	I have assumed that the development of 520 units between Planning Areas 1 (portion) and 3 is approved for development as identified.
CURRENT LISTING / CONTRACT(S):	The subject property is not currently under contract. An Exclusive Offering Memorandum was given for portions of Phase 1A of the Ritter Ranch Larger Parcel, with offers due by March 7, 2023. However, Phase 1A is not included within my analysis and was not given consideration in determining value.
SALE HISTORY:	The subject has transferred in the past 10 years, according to public records. On August 28, 2020, the subject lands were transferred between Preston Hollow Capital, LLC to RdR Development Holdings, LLC. The Grantor and Grantee in this conveyance were comprised of the same parties with same proportional interest. No prior sales information was available via public records.

PROPERTY

LAND AREA:	**Total:** 652.00 acres
ENTITLEMENTS:	The subject of this appraisal includes the entirety of Planning Area 3 (159 acres – 36 Residential Lots) and a portion of Planning Area 1 (484 acres – 484 Residential Lots / Six Acres Commercial) for a total of 520 lots. The Ritter Ranch Larger Parcel was approved in February 1992. Please note, the subject property is in a vacant, raw state as of the date of value, and further approval would be required prior to development. See Extraordinary Assumption.
ACCESS:	Paved and dirt roads.
TOPOGRAPHY:	The subject has level to moderately sloped terrain.
UTILITIES:	Electric power is available along Elizabeth Lake Road. Utilities are available but will require extension prior to development.

IMPROVEMENTS:	None
PERSONAL PROPERTY:	None
ZONING:	SP (Specific Plan – Ritter Ranch)
FLOOD ZONE:	The subject is primarily within Flood Zone X, which is identified with areas that have a corresponding one percent chance of an annual flood event. Flood Insurance is not mandatory, but available for purchase. **FEMA Map Number:** 06037C0635F **FEMA Map Date:** September 26, 2008 Please note, Rogers Creek traverses the northernmost areas of Planned Area 1 and is within Flood Zone A. Flood Zone A identifies areas inundated by 100-year flooding.
HIGHEST AND BEST USE	
Site:	Develop single-family residential homes
As Improved:	Not warranted as the subject is vacant land

VALUE INDICATIONS

RECONCILED VALUE(S):	**Bulk Market Value**
Value Conclusion(s)	$14,600,000
Effective Date(s)	August 1, 2023
Property Rights	Fee Simple

DEFINITION OF MARKET VALUE

I have used the following market value definition:

MARKET VALUE:

"The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgably, and for self-interest, and assuming that neither is under undue duress."[3]

PROPERTY RIGHTS APPRAISED

The property right of ownership appraised was the fee simple estate. Fee simple interest does include mineral rights, unless otherwise stated. The fee simple title can be defined as follows:

> *"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*[4]

[3] The Appraisal Institute, *The Appraisal of Real Estate - 14th Ed.,* (Chicago, IL: The Appraisal Institute, 2013), p. 59.

[4] Ibid.

HYPOTHETICAL CONDITIONS AND EXTRAORDINARY ASSUMPTIONS

Acceptance of and/or use of this report constitutes acceptance of the indicated Hypothetical Conditions and Extraordinary Assumptions; these can only be modified in a written document(s) executed by both parties.

HYPOTHETICAL CONDITIONS

A hypothetical condition is defined as "That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."[5]

The following hypothetical conditions apply to this specific appraisal assignment:

- There are no Hypothetical Conditions for this appraisal.

EXTRAORDINARY ASSUMPTIONS

An extraordinary assumption is defined as "An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis."[6]

The following Extraordinary Assumptions apply to this specific appraisal assignment:

- I have assumed that the development of 520 units between Planning Areas 1 (portion) and 3 is approved for development as identified.

[5] *The Appraisal of Real Estate* 14th Edition, Page 332, (Chicago: Appraisal Institute, 2013).

[6] Ibid.

GENERAL CONDITIONS AND ASSUMPTIONS

The appraisal has been completed subject to the following General Conditions and Assumptions:

- The appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (U.S.P.A.P.), and the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute. The development process used was a complete analysis documented in an appraisal report.

- This appraisal was completed per the requirements of the *Uniform Standards of Professional Appraisal Practice (USPAP)* and those additional requirements expected of a member of the Appraisal Institute. The development process used was a complete analysis that is documented in this appraisal report.

- We were not provided with a preliminary title report. We reserve the right to review and adjust our market value upon obtaining a current preliminary title report.

- By use of this appraisal report, each party that uses this report agrees to be bound by all of the Hypothetical Conditions and Extraordinary Assumptions stated herein. The opinions are only as of the date stated in the appraisal report. Changes since that date in external and market factors, or in the subject property itself, can significantly affect the conclusions presented in the appraisal report.

- This appraisal is to be used only for the purpose stated herein. While distribution of this appraisal in its entirety is at the discretion of the client, individual sections shall not be distributed as this report is intended to be used in whole and not in part.

- The appraised value was based on the assumption that there were no tax liens affecting the subject property. We noted in the property tax section of our report, the subject is current in the payment of property taxes according to the Los Angeles County Treasurer – Tax Collector. Please note, our reconciled market value has assumed there are no outstanding tax liens on the property. It was assumed that any special assessments affecting the subject property are typical and appropriate for the area and do not have an impact on the value conclusion in this report and that any outstanding bonds have been paid.

- All files, work papers and documents developed in connection with this assignment are the property of The Doré Group. No part of this appraisal, its value estimates, or the identity of the firm or the appraiser(s) may be communicated to the public through advertising, public relations, media sales, or other media without The Doré Group's prior written consent. If the appraisal report is referred to or included in any offering material or prospectus, the report shall be deemed referred to or included for informational purposes only and The Doré Group, its employees, and the appraiser(s) have no liability to such recipients. The Doré Group disclaims any and all liability to any party other than the party that retained The Doré Group to prepare the appraisal report.

- The information contained in this appraisal report, or upon which the report is based, has been gathered from sources the appraiser(s) assumes to be reliable and accurate. The owner of the subject property may have provided some of such information. Neither the appraiser(s), nor The Doré Group, shall be responsible for the accuracy or completeness of such information, including the correctness of estimates, opinions, dimensions, sketches, exhibits, and factual matters. Any authorized user of the appraisal report is obligated to bring to the attention of The Doré Group any inaccuracies or errors that it believes are contained in the report. Any plans provided are intended to assist the client in visualizing the property; no other use of these plans is intended or permitted. Appraisals are based on the data available at the time the assignment is completed. Amendments/modifications to appraisals based on new information made available after the appraisal was completed will be made, as soon as reasonably possible, for an additional fee.

- No part of the appraisal report shall be used in conjunction with any other analyses. Reference to the Appraisal Institute or to the MAI designation is prohibited. Except as may be otherwise stated in the letter of engagement, the appraisal report may not be used by any person(s) other than the party(ies) to whom it is addressed or for purposes other than that for which it was prepared. Any authorized user(s) of this appraisal report who provides a copy to, or permits reliance thereon by, any person or entity not authorized by The Doré Group in writing to use or rely thereon, hereby agrees to indemnify and hold The Doré Group, its affiliates and their respective shareholders, directors, officers and employees, harmless from and against all damages, expenses, claims and costs, including attorneys' fees, incurred in investigating and defending any claim arising from or in any way connected to the use of, or reliance upon, the appraisal report by any such unauthorized person(s) or entity(ies).

- If the appraisal report is submitted to a lender or investor with the prior approval of The Doré Group, such party should consider this report as only one factor, together with its independent investment considerations and underwriting criteria, in its overall investment decision. Such lender or investor is specifically cautioned to understand all Hypothetical Conditions and Extraordinary Assumptions incorporated in this appraisal report.

- The appraiser(s) may not divulge the material (evaluation) contents of the report, analytical findings, or conclusions, or give a copy of the report to anyone other than the client, legal authorities via subpoena, or the Appraisal Institute.

- The appraisal report is based on the assumption of: (a) responsible ownership and competent management of the subject property; (b) no hidden or unapparent conditions of the subject property, subsoil or structures that render the property more or less valuable (no responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them); (c) full compliance with all applicable federal, state and local zoning and environmental regulations and laws, unless noncompliance is stated, defined and considered in the Report; and (d) all required licenses, certificates of occupancy and other governmental consents have been or can be

obtained and renewed for any use on which the value opinion contained in the appraisal report is based.

- The physical condition of the improvements considered by the appraiser(s) is based on visual inspection by the appraiser(s). The Doré Group assumes no responsibility for the soundness of structural components or for the condition of mechanical equipment, plumbing or electrical components.

- The presence of hazardous substances may affect the value of the subject property. No hidden or unapparent conditions of the subject property, subsoil or structure, including without limitation, asbestos, formaldehyde foam insulation, polychlorinated biphenyl, petroleum leakage, or agricultural chemicals, which would make the property more or less valuable, were discovered by or made known to the appraiser(s). The appraiser(s) is not qualified to test for such substances and no responsibility is assumed for such conditions or engineering necessary to discover them. Unless otherwise stated, the appraiser(s) assumed there was no existence of hazardous materials or conditions, in any form, on or near the subject property.

- No opinion is intended to be expressed and no responsibility is assumed for the legal description or for any matters that are legal in nature or require legal expertise or specialized knowledge beyond that of a real estate appraiser. Title to the subject property was presumed to be good and merchantable and the property was appraised assuming there were no adverse easements, encroachments, liens, encumbrances, special assessments, or other restrictions.

- Unless stated herein, the subject property is assumed to be outside of areas where flood hazard insurance is mandatory. Maps used by public and private agencies to determine these areas are limited with respect to accuracy. Due diligence has been exercised in interpreting these maps, but no responsibility is assumed for misinterpretation.

- The Doré Group was not provided with a Biological Survey detailing possible biological species. Without a recent biological survey of the property, it could not be determined which species are actually on or frequent the subject land. The vegetation cover on the subject land is typical for the area and may provide habitat for many indigenous animal species found throughout the area.

- No opinion is expressed with regard to potential seismic impact and it was assumed that the subject's potential risks are similar to those shared by most properties throughout the region. The Doré Group makes no warranty as to the seismic stability of the subject land. The assumption was made that any future development of the property, if any, would occur in accordance with all appropriate regulations and ordinances regarding grading, fill, and applicable building codes.

- Except as may be otherwise stated in the letter of engagement, the appraiser(s) shall not be required to give testimony in any court or administrative proceeding relating to the subject property or the appraisal. If the appraiser(s) is subpoenaed pursuant to a court order, the client agrees to pay The Doré Group's regular per diem rate plus expenses.

- In the event of a claim against The Doré Group, its affiliates, their respective officers or employees, or the appraiser(s) in connection with or in any way relating to this appraisal report or this engagement, the maximum damages recoverable shall be the amount of the monies actually collected by The Doré Group or its affiliates for this appraisal report and under no circumstances shall any claim for consequential damages be made.

- Any estimate of insurable value, if included within the agreed upon scope of work and presented within this report, is based upon figures derived from a national cost estimating service and is developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, it is strongly recommended that the client obtain estimates from professionals experienced in establishing insurance coverage for replacing any structure. This analysis should not be relied upon to determine insurance coverage. Furthermore, the appraiser(s) makes no warranties regarding the accuracy of this estimate.

- Necessary licenses, permits, consents, legislative or administrative authority from any local, state, or federal government, or private entity, are assumed to be in place or reasonably obtainable.

- We assumed no legal mining claims for surface or subsurface extraction. No documentation was located or provided that would support a mineral right claim. However, even if mineral rights were allowed, it would not influence the value conclusions because the discovery, extraction, and marketing of mineral products usually requires the investment of large amount of capital over an extended period of time as well as a large element of risk. Mineral production is not typical in the subject area and is considered highly speculative.

- We assumed that any existing uses have met the requirements of the Clean Water Act (CWA), as stipulated in Section 402 & 404, which govern the discharging, dredging, or filling of any “waters of the U.S.” The “waters of the U.S.” include intermittent streams and wetlands as defined by the Army Corps of Engineers.

SCOPE OF WORK

According to the *Uniform Standards of Professional Appraisal Practice*, it is the appraiser's responsibility to develop and report a scope of work that results in credible results that are appropriate for the appraisal problem and intended user(s). Therefore, the appraiser must identify and consider:

- the client and intended users;
- the intended use of the report;
- the type and definition of value;
- the effective date of value;
- assignment conditions;
- typical client expectations; and
- typical appraisal work by peers for similar assignments.

In preparing this report, I investigated numerous land and improved sales and listings, as well as market rent comparables, from the area, and confirmed all data with buyers, sellers, brokers, property developers, leasing agents, and public officials when possible. I collected, confirmed, and reported data that were applicable in the valuation process. Data collection involved the use of various sources including the Multiple Listing Service, RealQuest (a data collection service), Los Angeles County deed records, and in-house materials. The data collected and confirmed have been reported to an extent sufficient for the particular appraisal problem involved.

This appraisal is prepared for RdR Development Holdings LLC and related parties. The problem to be solved is to estimate the 1) Bulk Market Value of the subject lands, and 2) the Sum Retail of the Individual Units. The intended use is to determine Market Value.

SCOPE OF WORK

REPORT TYPE:	This is an appraisal report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2(A). This format provides a summary of the appraisal process, subject and market data and valuation analyses.
PROPERTY IDENTIFICATION:	The subject has been identified by the legal description, the assessors' parcel numbers, and the final tract map. The legal descriptions are lengthy and retained in our files.
INSPECTION:	Lance W. Doré, MAI, FRICS, inspected the subject property on August 1, 2023. At that time, a complete interior and

	exterior inspection of the subject property has been made, and photographs taken.
MARKET AREA AND ANALYSIS OF MARKET CONDITIONS:	A complete analysis of market conditions has been made. The appraiser maintains and has access to comprehensive databases for this market area and has reviewed the market for sales and listings relevant to this analysis.
HIGHEST AND BEST USE ANALYSIS:	A complete as vacant and as improved highest and best use analysis for the subject has been made. Physically possible, legally permissible and financially feasible uses were considered, and the maximally productive use was concluded.
VALUATION ANALYSES:	
Cost Approach:	A cost approach was not applied as the subject is unimproved land. Thus developing a cost approach is not warranted.
Sales Comparison Approach:	A sales approach was applied as there is adequate data to develop a value estimate and this approach reflects market behavior for this property type.
Income Approach:	The income approach converts the anticipated flow of future benefits (income) to a present value estimate through a capitalization and or a discounting process. The income approach was not applied as we are valuing vacant land with no improvements. However, a method to value known as a Land Residual, or Subdivision Analysis uses a discounted cash flow model to support the present value of a “for sale” lot program. This method to value is similar to an income approach.
HYPOTHETICAL CONDITIONS:	There are no hypothetical conditions for this appraisal.
EXTRAORDINARY ASSUMPTIONS:	I have assumed that the development of 520 units between Planning Areas 1 (portion) and 3 is approved for development as identified.

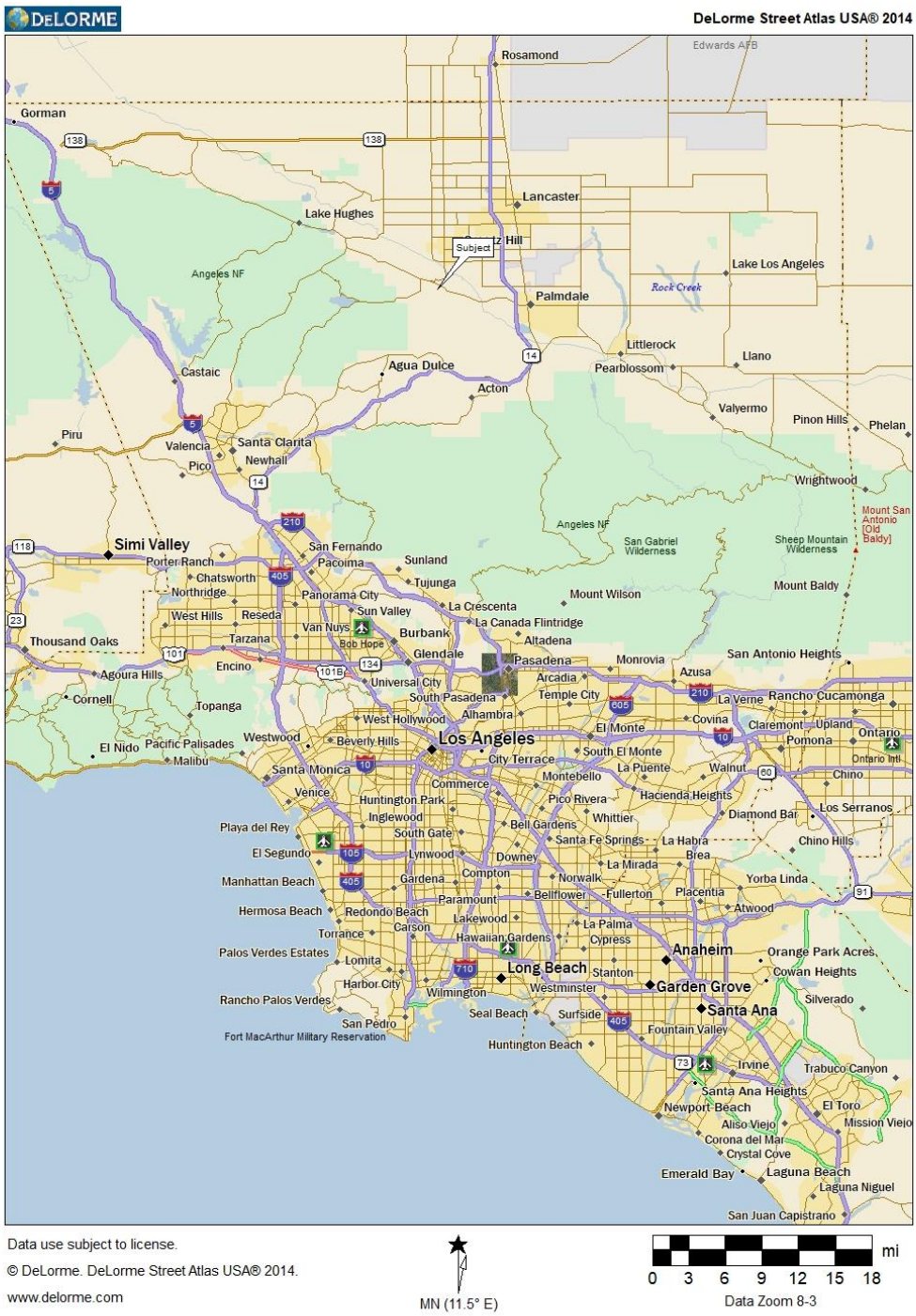
DOCUMENTATION:

The Doré Group was provided with the document(s) listed below. Unless noted, the document(s) did not indicate any unusual or detrimental conditions that have an impact on value. These documents were assumed to be accurate and were relied upon in the valuation of the subject property.

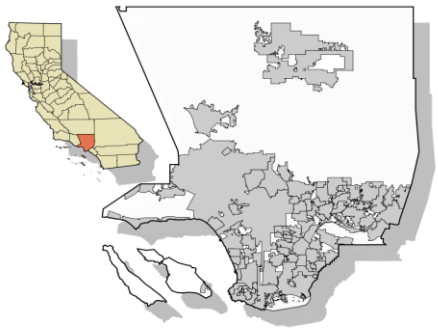
- Ritter Ranch Exclusive Offering Memorandum
- Ritter Ranch Specific Plan
- Market Report, prepared by Zonda and dated August 2021
- Transfer Site Plan
- A.L.T.A Land Title Surveys for Ritter Ranch Property

No responsibility is assumed for any missing pertinent data contained within these documents and the reconciled value does not reflect knowledge of their content.

REGIONAL MAP



REGIONAL DESCRIPTION – LOS ANGELES COUNTY



One of California's oldest counties, Los Angeles County is situated in the southwest corner of the state and is bordered by Kern County (north), 70 miles of the Pacific Ocean coastline and Orange County (south), Ventura County (west), and San Bernardino County (east). With a land area of 4,752 square miles, it is home to 88 incorporated cities and is the most populous county in the U.S. Most of the population resides in the southern and southwestern portions of the county, with major population centers also located in the Los Angeles Basin, San Fernando Valley, and San Gabriel Valley and secondary centers in the Santa Clarita Valley, Crescenta Valley, and Antelope Valley. The county is divided into the following major areas:

- EAST: Eastside, San Gabriel Valley, Pomona Valley
- WEST: Westside, Beach Cities
- SOUTH: South Bay, Palos Verdes Peninsula, South Los Angeles, Gateway Cities, Los Angeles Harbor Region
- NORTH: San Fernando Valley, portions of the Conejo Valley and Antelope Valley, Santa Clarita Valley
- CENTRAL: Downtown Los Angeles, Mid-Wilshire

TRANSPORTATION

An extensive and well-developed freeway system provides access to, from and throughout Los Angeles County. Primary freeways include Interstates 5, 105, 405, 605, 10, 110, 210, and 710. There are also numerous state highways and a vast urban and suburban street network. All thoroughfares are impacted by moderate to severe traffic congestion during commute hours and freeway-to-freeway interchanges regularly rank in the top ten most congested in the nation.

Bus service is provided by Los Angeles Metro and numerous municipal operators. Los Angeles International Airport, one of the busiest airports in the world, is the primary commercial airport serving the region. Additional airports include Long Beach Municipal Airport (Long Beach), Bob Hope Airport (Burbank), and LA/ Palmdale Regional Airport (Palmdale), as well as numerous smaller scale commercial and non-commercial facilities.

Los Angeles is a major freight railroad transportation hub due to large volumes of freight arriving/departing out of the county's port facilities and industrial hubs; Union Pacific and Burlington Northern Santa Fe provide freight rail service. Amtrak, Los Angeles Metro Rail, and Metrolink provide commuter and long-distance passenger rail service; Amtrak also runs several

intercity passenger rail lines from Los Angeles' Union Station, including the Pacific Surfliner, the Coast Starlight, the Southwest Chief, and the Sunset Limited. California High-Speed Rail is a high-speed rail system currently under construction. The proposed line will connect Los Angeles with San Francisco by 2029, with future extensions to San Diego and Sacramento. Due to the project's nearly $70 billion cost and large scope, it is surrounded by much controversy and will likely face significant delays.

The county has two main seaports – the Ports of Los Angeles and Long Beach – which handle over a quarter of all container traffic entering the U.S., making the complex the largest and most important port in the country and the third-largest port in the world in shipping volume. The Port of Los Angeles is also the largest cruise ship center on the West Coast, handling more than a million passengers annually.

SERVICES

Los Angeles County offers a complete array of services to residents and visitors. The Los Angeles Department of Water & Power and Southern California Gas Company provide most residents with water, gas and electricity. Law enforcement and fire protection are provided by the Los Angeles County Sheriff and Fire Departments, as well as individual city police and fire departments. There are approximately 78 public school districts overseen by the Los Angeles County Office of Education. The county is home to three world-class research institutions and 118 public and private colleges and universities – including several California State Universities (Long Beach, Northridge, and Los Angeles) and University of Southern California.

RECREATION | TOURISM

Los Angeles is one of the nation's top tourist destinations due to its wide variety of recreational attractions, including numerous beaches, major amusement parks, golf courses, and a multitude of historical, cultural, and sporting venues and events. Primary attractions include Venice and Malibu Beaches, Six Flags (Hurricane Harbor and Magic Mountain), Universal Studios, Raging Waters, Hollywood and Beverly Hills, the Queen Mary, and the Los Angeles Zoo. The Los Angeles Convention Center has 720,000 square feet of exhibition space and 147,000 square feet of meeting space and hosts several major annual conventions. The 4,300-acre Griffith Park is the most visited city park in the county. There are a host of other natural attractions, including the Santa Monica and San Gabriel Mountains, Angeles and Los Padres National Forests, Santa Catalina and San Clemente Islands, Castaic Lake, the Los Angeles, Rio Hondo, Santa Clara, and San Gabriel Rivers, and the Mojave Desert, providing for outdoor recreation.

POPULATION | DEMOGRAPHICS

As mentioned, Los Angeles County is the most populous county in the U.S. and is home to 88 incorporated cities, the largest being Los Angeles (3,766,109), Long Beach (458,222), and Glendale (191,284). The city of Los Angeles is the county seat of government, the largest city in the state, and second largest in the U.S. behind New York City.

The California Department of Finance estimated the county's population at 9,761,210 as of January 2023, which is a slight decrease of -0.7% from 2022. This population comprises close to one-quarter of the state's total population. Most of the recent population growth in Los Angeles County has been due to natural increase (births outnumbering deaths), while net migration was slightly negative again last year. The county's high cost of living and lack of affordable housing units for low and middle-income households are contributing to the slowdown in population growth.

HISTORICAL POPULATION AND PROJECTIONS (2020 - 2060)						
	2020	2030	2040	2050	2060	% Change (2020-2060)
Los Angeles County	**10,171,593**	**10,322,678**	**10,286,350**	**10,061,774**	**9,697,634**	**-4.7%**
California	39,782,419	41,860,549	43,353,414	44,049,015	44,228,057	**11.2%**
Source: California Dept of Finance						

According to the 2021 American Community Survey/US Census data, Los Angeles County had 3,375,587 households with 2.86 persons per household. The median age was 37.8 years.

10 LARGEST INDUSTRIES IN LA COUNTY		
Employer	No. of Employees	% Of Total
Educational & Health Services	867,600	19.19%
Trade, Transportation and Utilities	846,800	18.73%
Professional & Business Services	657,000	14.53%
Government	572,100	12.66%
Leisure & Hospitality	499,900	11.06%
Manufacturing	321,800	7.12%
Information	228,200	5.05%
Financial Activities	214,200	4.74%
Construction	156,600	3.46%
Other Services	150,200	3.32%
Source: 2022 LA County Annual Comprehensive Financial Report		

Regional Economy

Trends in employment are a key indicator of economic health and strongly correlate with real estate demand. Los Angeles is known as the capital of entertainment, manufacturing, and international trade in the U.S., but its economic base is broad and driven by the aerospace, automotive, biotechnology, and fashion industries. Two busy seaports, the busiest airport, three world-class research institutions, and 118 colleges and universities contribute significantly to the region's $584 billion annual economic activity.

Employment | Unemployment Rate

According to the California Employment Development Department, the county had a labor force of 5,024,300 in June 2023. Of this total, 4,758,700 were employed and the unemployment rate was 5.3%.

PERSONAL | HOUSEHOLD INCOME

According to the latest Census figures, Los Angeles County had a per capita income of $38,388, as compared to the state's income of $42,396. The county's median household income was $77,456, compared to $84,907 in the state. 14.2% of the county's population lived below the poverty level, which is slightly higher than the state (12.3%).

LA COUNTY & SURROUNDING COUNTIES HOME TRENDS			
Median Sold Price of Single-Family Homes			
County	Jul-23	Jul-22	YTY% Chg
Los Angeles	**$865,000**	**$861,176**	**0.4%**
Orange	$1,051,000	$970,000	8.4%
Riverside	$565,000	$570,000	-0.9%
San Bernardino	$505,000	$505,500	-0.1%
San Diego	$860,000	$820,000	4.9%
Ventura	$840,000	$840,883	-0.1%
Source: CRMLS			

REAL ESTATE DEVELOPMENT

Los Angeles County has a wide range of property types and limited vacant land in populated areas, typical of a large metropolitan area.

RESIDENTIAL

According to the California Regional Multiple Listing Service, the median price for all homes was $865,000 in July 2023, up 0.4% from July 2022.

Los Angeles apartment market conditions provide mixed signals. Several data points suggest the market has stabilized in 2023. Rents, which saw slight declines late last year, reached a floor in early December. Renter demand has improved in recent months compared to the negative net absorption witnessed late last year. While property managers are providing more generous incentives than a year ago, the percentage of properties offering concessions, around 20%, has held steady since October 2022.

However, on a market-wide basis, vacancies, at 4.4%, continue to increase and is up from a recent low of 3.7% in 22Q1. Both demand and supply have precipitated the increase. Net absorption during the past 12 months, 2,800 units, represents a dramatic deceleration from the record 32,000 units absorbed in 2021. Renters grew cautious last year as inflation reached decades-high levels and greater economic uncertainty surfaced. Also, absorption was insufficient to offset the 10,000 net new units completed during this time. While rents are rising on a year-over-year basis, rates have only increased by 1.5% during the past 12 months.

With 26,000 units under construction, representing 2.5% of inventory, and moderate tenant demand anticipated in the near term, vacancies are expected to continue to rise through the remainder of the year. The impact of completions going forward will disproportionately affect the locations where activity is concentrated. One-third of the units underway are in three submarkets, Downtown Los Angeles, Koreatown, and Greater Inglewood, which comprise only 15% of existing inventory in Greater Los Angeles. In contrast, many other submarkets will face limited supply pressures.

Based on conversations with local multifamily sales brokers, the increase in debt costs and tighter lending standards have impacted transaction activity since the second half of last year. The number of properties that traded in the past three months is well below the 640 properties that traded quarterly on average, during the past decade. Many buyers and sellers have different expectations for pricing. Sellers want the elevated pricing seen in early 2022, whereas buyers seek a discount, given higher debt costs making it more difficult to achieve targeted investment returns. Several local brokers have said many buyers expect a 10-20% discount relative to early 2022 pricing. The rise in debt costs and additional transfer taxes passed by the City of Los Angeles and Santa Monica (see sales section for additional detail) will likely suppress near-term transaction volumes and lead to downward pressure on asset values.

OFFICE

According to CoStar, uncertainty and pessimism surround Los Angeles' office sector. Vacancies are at 14.9% and continue to reach new heights. The pace at which vacancies have increased has accelerated since the second half of 2022. The rapid rise in debt costs last year and resulting economic uncertainty have led to more restrained leasing activity. The dramatic increase in sublease availabilities since early 2020, from 5.3 million SF to 11.7 million SF, demonstrates that numerous tenants have decided to downsize their office footprints. The outlook for the market is also bleak, with vacancies anticipated to continue to increase through at least the remainder of the year.

With the challenging leasing environment, developers have become more selective in commencing new office projects. Starts in 2021-22 averaged only 1.2 million SF, less than half the 3 million-SF annual average from 2014-20. Construction underway, 3.7 million SF, is down from a peak of 8.8 million SF in the second half of 2020.

One exception to the hesitancy seen by developers is 1950 Avenue of the Stars, a 731,000-SF tower in Century City that commenced construction in early 2023. Developer JMB Realty secured over 50% pre-leasing with Creative Artists Agency, committing to 400,000 SF in the project. Century City has been one of the better performing locations in the past several years and remains a choice location for image-conscious tenants. While vacancies have increased in areas like the Greater L.A. office market since early 2020, Century City has been one of the few locations in the metro to see vacancy come down from a recent peak.

JMB Realty likely also realized that the new office space has fared best in the current environment. During the past three years, leasing activity has held up best in L.A.'s newest assets, with only assets built since 2010 experiencing positive net absorption during the past three years. Century City has not seen an office building deliver since 2006. Numerous firms in Greater Los Angeles see the value in top-tier space to attract talent and entice workers to the office.

Weak market fundamentals have led to waning investor interest in office assets in the metro, with the past several quarters seeing some of the softest activity in the market's history. 22Q3 through

23Q1 saw $2.5 billion in office sales. Dollar volumes were less than half the $5.2 billion that sold during 21Q4 through 22Q2, the prior three quarters.

Some investors are likely waiting for distressed opportunities, which are starting to surface. As one of the most prominent examples of distress in the L.A. market, this February, Brookfield, the largest owner of office buildings in the submarket, defaulted on its loans for Gas Company Tower ($465 million in loans) and 777 S. Figueroa St. ($318.6 million in loans). The two buildings are held in the Brookfield DTLA Fund Office Trust Investor REIT, which owns four additional towers downtown. The lenders have yet to exercise options to foreclose on the properties, suggesting lenders are not optimistic about future space demand for the towers.

RETAIL

Los Angeles' diverse demographics, distinctive mix of industries, creative economy, entrepreneurship, and tourist attractions create a dynamic retail market. Demand for retail space is supported by the metro's 10 million residents, the quarter million daily commuters who flow into the metro, and 40 million annual overnight visitors. In aggregate, population losses are impacting L.A.'s retail market. Cumulative net absorption from 2018 to 2023 year-to-date has been negative, while the population base has been declining.

L.A.'s diverse demand drivers have been changing disparately in the past two years, which is leading to growing availabilities in some portions of the market, but not others. Since the start of 2021, the increased preference for convenience has led to additional demand for neighborhood centers. While retail availability has been rising sharply, availability in neighborhood centers, which have benefitted from strong demand from a diverse array of tenants including grocers, is declining. Consumer foot traffic has shown a clear preference for convenient centers with easy access and multiple shopping methods. Tight availabilities and growing demand for space have resulted in stronger rent growth for neighborhood centers relative to the wider retail market.

Conversely, availability is mounting in malls and power centers. Submarkets in the west, where tech and financial firms are most notably positioned, are also experiencing softer demand as workers are spending less near their offices. These submarkets, such as the Downtown L.A and Santa Monica Submarkets, also generally have the most overnight travelers.

Several large retail developments are under construction, but many were underway well before the pandemic began. Instead, more recent construction comprises small retail pads, usually with drive-thru capabilities.
Sales activity over the past 12 months comprises many shopping malls, leading to outsized sales volume despite the rising interest rate environment. Of these large malls that have traded in the past 12 months, none signal redevelopment plays. Investor appetite has been strong for grocery store anchored shopping centers.

INDUSTRIAL

As a key industrial hub in the U.S., Los Angeles is the center of the 2 billion-SF Southern California industrial market. Demand draws from the 20 million Southern California residents and from goods entering the twin ports of Los Angeles and Long Beach, which combined handle nearly a third of all imports to the United States.

Demand for industrial properties has been impacted by losses in imports entering the ports from Asia. Loaded inbound containers declined by 27% during the 3 months ending in February 2023 compared to the previous 3-month period. Consequentially, market conditions have softened, and the vacancy rate has risen from 2.0% to 3.4%. The sudden downshift in market conditions has yet to translate to material changes in asking rent, where rents are still 9.6% higher than a year ago and have grown by 53.3% over the past five years.

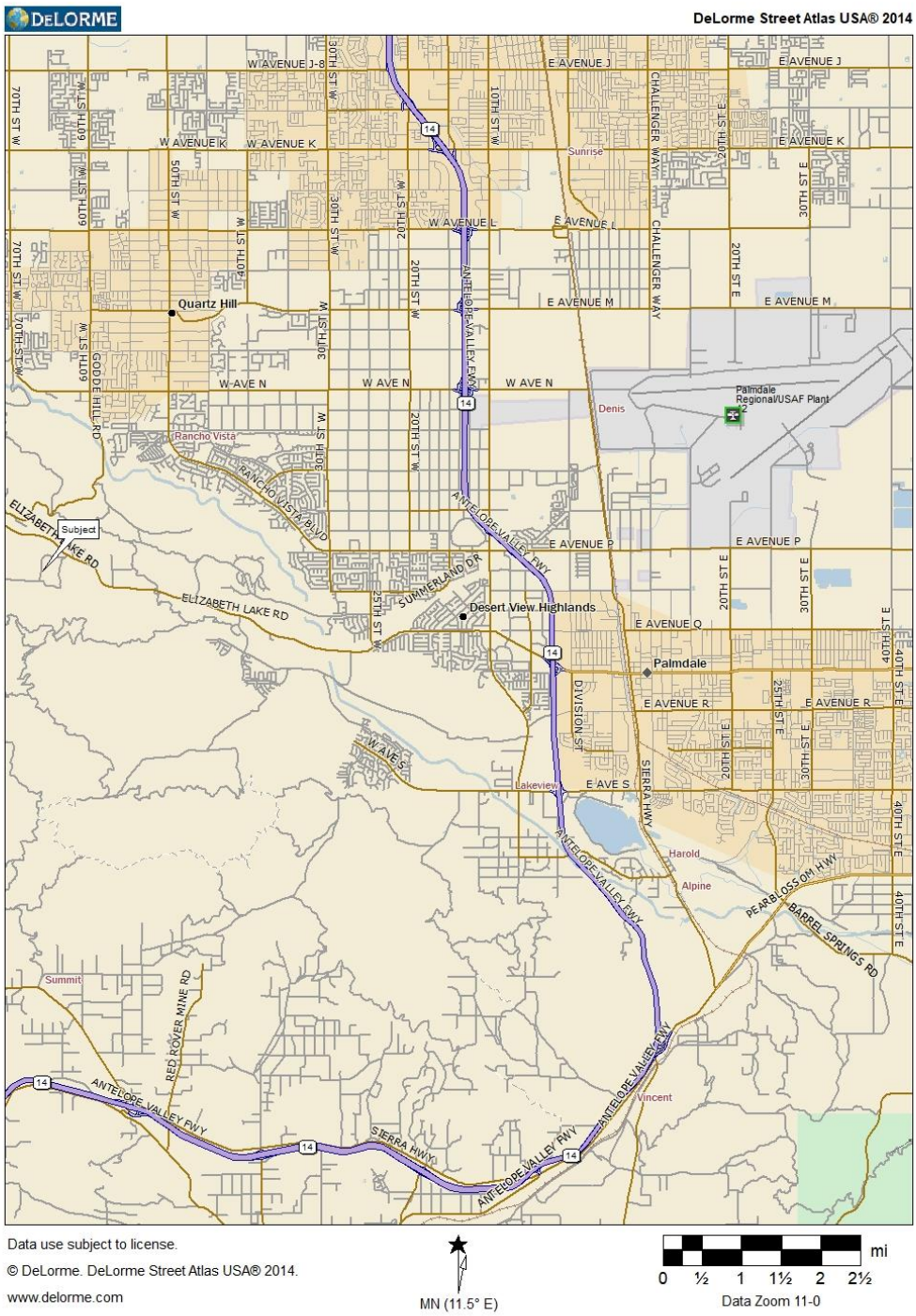
Despite recent slowing in demand, the outlook in the space market is steady because, unlike the national landscape, available space is constrained by the limited supply growth created by the obstacles to deliver industrial product in Los Angeles. Most industrial development in Southern California takes place in the Inland Empire, where land is cheaper and in greater supply. In recent years, some properties have been scraped and redeveloped into modern logistics facilities, while others, especially in West Los Angeles, have been converted to creative offices.

With tighter capital market conditions across the nation, local sales activity has finally started to moderate in 2023. Fewer properties are trading for redevelopment purposes and sale-leaseback deals have become more common.

CONCLUSION

Over the long term, the county will be positively impacted by a slow and steadily increasing population base, a relatively strong GDP, a well-developed distribution network, and its established reputation as a thriving metropolitan and manufacturing area and touristic destination. It is anticipated that the regional economy will continue to improve, and employment will increase, strengthening the demand for real estate.

AREA MAP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Denis
Palmdale Regional/USAF Plant
Subject
Desert View Highlands
Palmdale
Lakeview
Harold
Alpine
Summit
Vincent
ANTELOPE VALLEY FWY
ELIZABETH LAKE RD
RANCHO VISTA BLVD
SUMMERLAND DR
DIVISION ST
SIERRA HWY
PEARBLOSSOM HWY
BARREL SPRINGS RD
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Data use subject to license.
© DeLorme. DeLorme Street Atlas USA® 2014.
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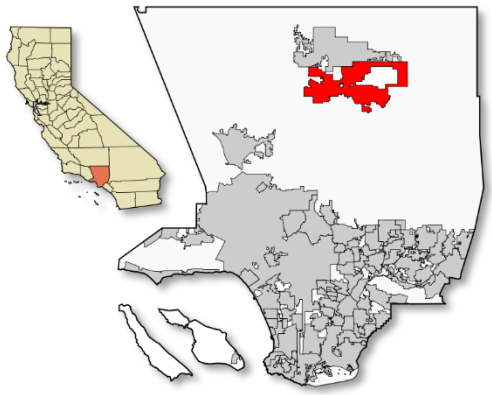
AREA DESCRIPTION – CITY OF PALMDALE



LOCATION / ACCESS

Palmdale is located in the center of northern Los Angeles County, about 60 miles north of the city of Los Angeles. The urbanized centers of Palmdale and Los Angeles are separated by the San Gabriel mountain range, which is about 40 miles wide. This range forms the southern edge of the Antelope Valley portion of the Mojave Desert. Palmdale is the second largest city in the Antelope Valley, and the fifth largest city overall in the Mojave Desert by population, after Las Vegas, Henderson, North Las Vegas and Lancaster. Palmdale is part of a twin city complex with its immediate northern neighbor Lancaster and together they are the principal cities within the Antelope Valley region and California's High Desert. According to the United States Census Bureau the city has a total area of 106.2 square miles, of which, 106.0 square miles of it is land and 0.3 square miles of it is water (including man-made Lake Palmdale, the most visible and scenic part of the municipal water supply system). The city lies in close proximity to the San Andreas Fault, making it, like many other regions of California, prone to strong earthquakes. This fault cuts across the Antelope Valley Freeway just north of the Avenue S off-ramp; running westward along the old Butterfield Stage Line (now Elizabeth Lake Road) into Leona Valley.

Palmdale has a well-maintained system of freeways and surface streets. The main freeways connecting the city to greater Los Angeles and Orange County, include Interstates 5 and 15 and State Routes 14, and 138.

The Palmdale Transportation Center provides a state-of-the-art transportation facility. This regional multi-modal hub offers connections between Antelope Valley Transit Authority local and commuter bus service, Metrolink commuter rail service, Santa Clarita Transit, Greyhound bus service and Amtrak Throughway bus service. Los Angeles International Airport is about 70 miles from Palmdale and the Bob Hope Airport (located in Burbank) is about 50 miles away from the city.

POPULATION / DEMOGRAPHICS

Palmdale is the sixth largest and one of the fastest growing cities in Los Angeles County. According to the California Department of Finance, the city of Palmdale had a January 1, 2023, population of 165,917. This is a decrease of 0.7% from the January 2022 population of 167,015.

According to the 2021 American Community Survey/US Census, the city of Palmdale had 46,650 households with 3.55 persons per household and a median age of 33.5 years.

SERVICES

Palmdale has adequate schools, police and fire protection, public facilities, and utilities. The city is served by three school districts, the Westside School District serves students west of 25th Street West and the Palmdale School District serves students east of 25th Street West to 80th Street East. The Antelope Valley Union High School District serves high school students throughout the Antelope Valley. Nearby Antelope Valley College offers associates of arts and science degrees. The City of Palmdale is served by a variety of utility agencies. Southern California Edison provides electricity, Southern California Gas Company provides natural gas, the Palmdale Water District and Los Angeles County Waterworks provide water, Waste Management of Antelope Valley provides trash collection, the City of Palmdale Utilities Division and the Sanitation Districts of Los Angeles County provide the city with sewer services.

Palmdale features many parks, as well as recreation centers, pools, and skate parks. The Best of the West Softball Complex features eight, year-round softball fields for youth and adult league play and softball tournaments. The Palmdale Amphitheater hosts a variety of concerts, festivals, and performances. The city also features the Barrel Springs Trail & Equestrian Arena and DryTown® Water Park.

10 LARGEST EMPLOYERS - PALMDALE

Employer	No. of Employees	% Of Total
Northrop Grumman	7,000	6.34%
Lockheed Martin	3,750	4.33%
Antelope Valley Union High School District	3,089	3.56%
Palmdale School District	2,100	2.42%
Antelope Valley Mall (All Stores)	1,800	2.08%
Palmdale Regional Medical Center	1,200	1.38%
Palmdale Walmart	800	0.92%
Robertson's Ready Mix Concrete	500	0.58%
Palmdale Auto Mall	410	0.47%
Granite Construction	400	0.46%

Source: 2022 Palmdale Annual Comprehensive Financial Report

LOCAL ECONOMY / INCOME

The city of Palmdale continues to enjoy a broadly based diverse economy, albeit one with an emphasis upon government, healthcare, and other service-oriented industries. Among Palmdale's large employers are the United States Armed Forces, Northrop Grumman, the County of Los Angeles, and Lockheed Martin.

EMPLOYMENT | UNEMPLOYMENT

According to the California Employment Development Department, the city of Palmdale had a total labor force of 61,900 as of June 2022, of which 6.9% were unemployed.

PERSONAL INCOME

According to the 2021 American Community Survey, the city had a median household income of $73,417 up from $55,696 in 2010. This compares to California ($84,907). Approximately 13.1% of all city residents live below the poverty level.

REAL ESTATE DEVELOPMENT

Palmdale is an ideal business center, with ease of access into and out of Los Angeles County. State Route 14 serves as the main arterial through the Antelope Valley. The city of Palmdale considers infrastructure improvements to be one of the most important investments within the community, with planning in process for multi-million-dollar transportation projects like High-Speed Rail, Express West and the High Desert corridor that will ultimately transform Palmdale into a regional transportation hub. The city is working hard to improve its infrastructure and has several projects currently underway.

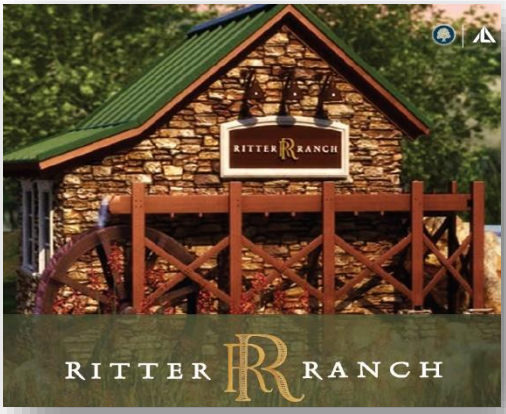
Residential

The median sale price of a single-family home in Palmdale has continued to rise year over year at an average increase of 13.0% per year although the pace of the improvement has slowed due to lack of inventories. According to the California Regional Multiple Listing Service the median sale price of a single-family home in Palmdale as of July 2023, was $485,000. This represents a -4.7% decrease in the median sale price from July 2022.

CONCLUSION

The same positive factors affecting the region, including diversified employment, the year-round mild climate, and overall quality of life, are the primary reasons why the city is expected to continue to thrive over time.

RITTER RANCH OVERVIEW



The subject lands are a portion of the overall Ritter Ranch Specific Plan. The Specific Plan was approved by the City of Palmdale in 1992 for the building of 7,200 homes, in phases, as well as specialty parks, a swim club, equestrian park, bikeways, hiking trails, a library, fire station, school sites, and commercial sites. The total acreage for Ritter Ranch Specific Plan is approximately 10,625 acres.

BACKGROUND

On February 27, 1992, an environmental impact report was certified by the City of Palmdale for the development of a 10,625-acre master planned community consisting of 7,200 residences, 7,628-acres of open space and the necessary public utilities, recreational amenities, schools, and commercial uses to support the community. On March 3, 1992, the City of Palmdale approved the Specific Plan. The approvals included: General Plan Amendment 91-3, pre-zone 89-12, SP 89-02, and Development Agreement 92-1.

In 1995, the Development Agreement was amended to define the responsibility of the City and the applicant to fund and construct various infrastructure improvements and provided the applicant with assurance that development standards within the Specific Plan would remain in place without change. On October 11, 1995, the City approved a Specific Plan Amendment with reflected changes made due to an Agreement of Compromise between the developer, City of Palmdale, and Leona Valley Town Council. The changes included the phasing of various infrastructure and amenities, reductions in the number of dwelling units in portions of the project, restrictions on allowable commercial uses in some portions of the project, and various minor text changes.

In December 1995, the City approved six VTTMs (51604, 51605, 51606, 51607, 52093, and 52116) and although the maps were not recorded, the lots were graded and internal roadways were partially installed (final paving was not completed). After a series of automatic and discretionary extensions of time, all six VTTMs expired on January 20, 2017.

A revised Development Agreement for the Specific Plan was approved in 2004, replacing the original Development Agreement 92-1. Similar to the previous development agreement, the 2004 development agreement defined the responsibilities between the master planner and the City to fund and construct various infrastructure improvements and provided the applicant with

assurance that the development standards specified within the Specific Plan would remain applicable to the project. In June 2012, the 2004 development agreement subsequently expired on its own terms.

On March 2, 2006, the City approved VVTMs 51508-03 and 63145. VTTM 63145 was subsequently recorded and subdivided 92.32 acres into six lots. VTTM 51508-03, for the subdivision of 50.56 acres into 241 single-family residential lots, three open space lots, and two park lots. These VTTMs subsequently expired on August 23, 2019.

Subsequent to the expiration, mass grading consistent with VTTM 51808 was completed, and backbone roads (Westland Drive and Ranch Center Drive) were installed. These roadways are currently open to public travel. Portions of the required perimeter walls along these roadways were also installed.

Around October 22, 2018, the City of Palmdale was advised that Sun Cal Developer had acquired all of the ownership interests from Ritter Holdings and intended to move forward with the development of the Ritter Ranch Project. Preston Hollow Capital purchased the 93-1 Bonds from Ritter Holdings. During the period of November 2016 to October 2018, no work commenced.

In July 2020, Preston Hollow Capital transferred the subject lands to RdR Development Holdings, LLC (Owner). On September 1, 2020, the City Council adopted a resolution approving certain actions related to the Ritter Ranch Project, including financial agreements and land use approvals.

On February 10, 2022, the Planning Commission approved Conditional Use Permit 22-001, Planned Development 21-001, and Vesting Tentative Tract Maps 51604, 51605, 51606, 51607, 52093, and 52116. These approvals are for Phase 1 of the overall Ritter Ranch Project, which is not part of this analysis.

The subject that is a portion of this analysis includes portions of Planning Area 1, which is 490 acres and will include 484 residential lots as well as 67,954 square feet of commercial space. Additionally, Planning Area 3 in its entirety is included within this analysis. This Planning Area includes 159 acres with 36 proposed residential lots. Development of the subject lands will be subject to subsequent entitlement approvals and California Environmental Quality Act (CEQA) review.

PROPERTY DESCRIPTION

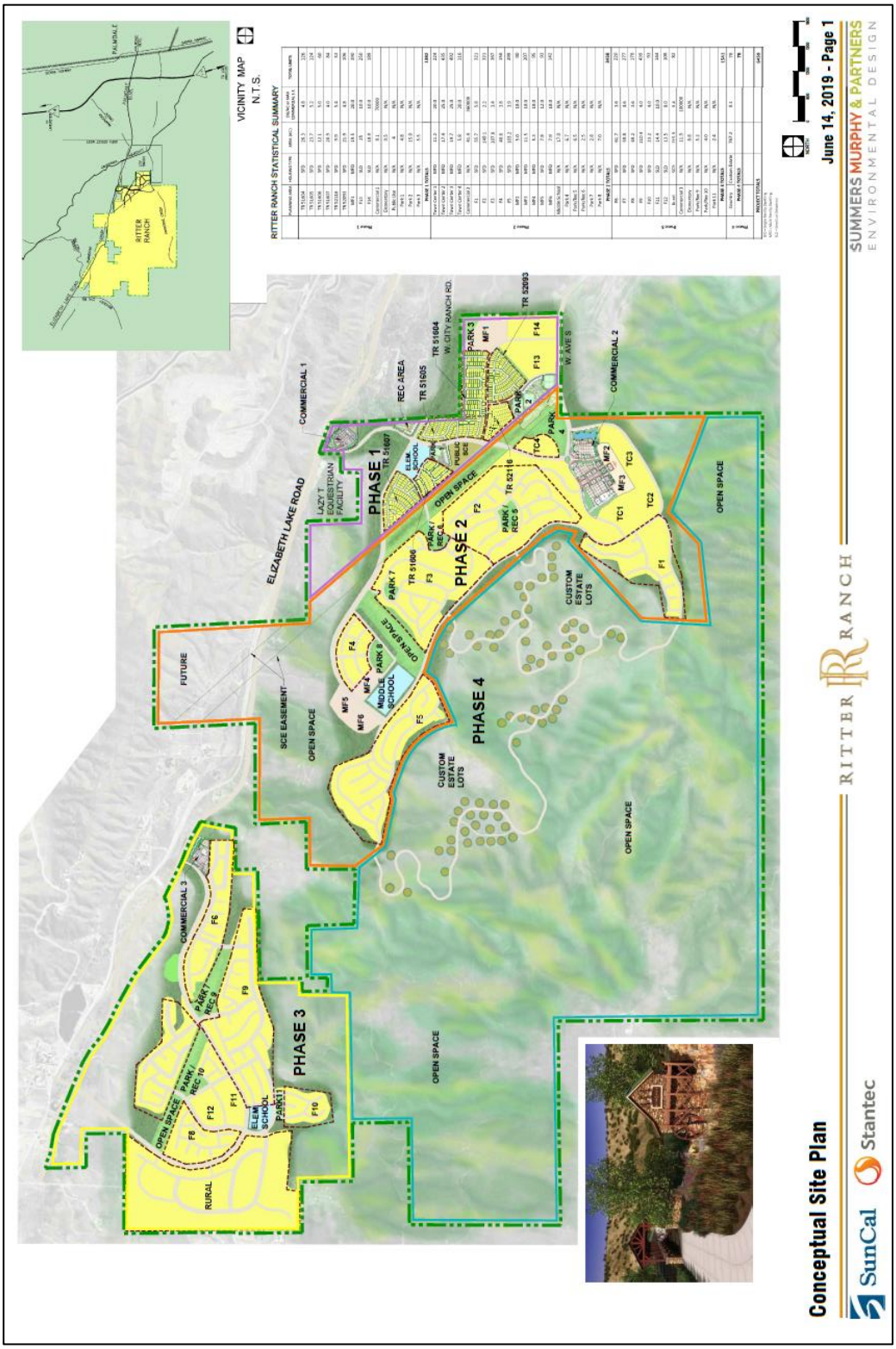
SITE

LOCATION:	The subject lots are generally located South and North of Elizabeth Lake Road, East of Bouquet Canyon Road Los Angeles County, California 93551
CURRENT USE:	Vacant land, approved within Specific Plan for 520 total residential lots between Planning Areas 1 and 3. Planning Area 1 also includes six acres of commercial land. Please note, while we are aware if the six acres of commercial land within Planning Area 1, this land contributes to less than 1% of the overall Ritter Ranch land. There is a lack of support for commercial uses within the specific subject area, and the commercial need would require full development of the Ritter Ranch project. Therefore, the commercial land does not contribute to the overall land value.
PROJECT SUMMARY:	The parcel map for the 652.00 acres that are the subject of this appraisal report creates up to 520 residential lots and one commercial lot that contains six acres.
SITE IMPROVEMENTS:	Vacant land.
PERSONAL PROPERTY:	None
ASSESSOR PARCEL NUMBERS:	3205-002-028, et al (A complete list is contained in the property description and Property Taxes and Assessments Sections within the Addenda).
FRONTAGE / ACCESS:	Planning Area I has approximately 9,975 feet of frontage along Elizabeth Lake Road, a 2-lane residential corridor which connects much of the Antelope Valley. Planning Area 3 has approximately 2,694 feet of frontage along Elizabeth Lake Road. State Route 14 is approximately 4.67 miles east of Planning Area 3. Access to the interior subject areas will be via private roads within the community.
VIEWS & VISIBILITY:	The lots vary with respect to views and visibility. The majority of lots have views of vistas and canyons, as well as some views of Rogers Creek. These views are considered an amenity.

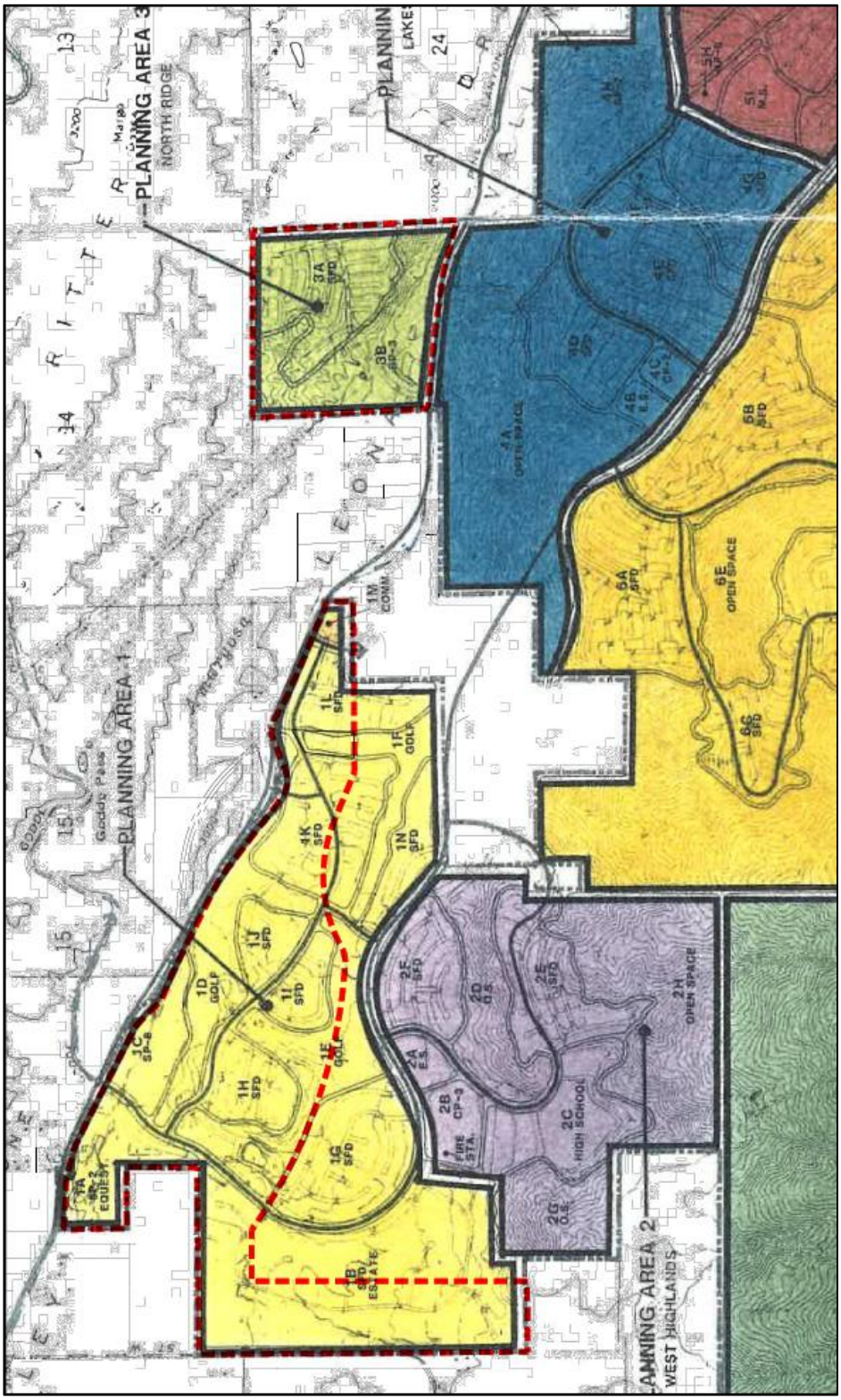
TOPOGRAPHY:	The subject has level to rolling to steep terrain.	
SOIL CONDITIONS:	The soil conditions observed at the subject appear to be typical of the region and adequate to support development.	
HAZARDOUS SUBSTANCES:	I did not observe any evidence of toxic or hazardous substances during inspection of the site; however, I have no expertise in evaluating toxic or hazardous site conditions and cannot make substantiated remarks in this field of study. The subject is not listed as a hazardous site per the *Hazardous Waste and Substances Sites List* compiled by the California Environmental Protection Agency. The Doré Group was not provided with a *Phase I Environmental Assessment Report* or any other reports addressing potentially hazardous materials on or near the subject property. No warranty is made as to the condition of the property relative to hazardous chemicals or toxic wastes. The client is urged to retain an expert in this field if the existence of such materials is suspected. This analysis was based on the assumption that no hazardous chemical contamination of any kind exists on the subject land.	
UTILITIES:	**Electricity:**	Electricity is at Elizabeth Lake Road but would require extension prior to development.
	Sewer:	Sewer services are required prior to development.
	Water:	Water services would require extension prior to development.
	Natural Gas:	Gas services would require extension prior to development.
	Underground Utilities:	None
	Adequacy of Systems:	Utilities are typical for vacant lands in the subject market area. All utilities would require extension prior to development.
FLOOD ZONE:	The subject is primarily within Flood Zone X, which is identified with areas that have a corresponding one percent chance of an annual flood event. Flood Insurance is not mandatory, but available for purchase. **FEMA Map Number:** 06037C0635F **FEMA Map Date:** September 26, 2008	

	Please note, Rogers Creek traverses the northernmost areas of Planned Area 1 and is within Flood Zone A. Flood Zone A identifies areas inundated by 100-year flooding.
WETLANDS / WATERSHED:	A portion of Planning Area 1 has Rogers Creek traversing the portion of land in a west to east direction. This is a seasonal stream.
MINERAL RIGHTS:	This area has low potential for mining related activity.
ENVIRONMENTAL ISSUES:	Based on the information provided, I recognize portions of the subject lots are environmental sensitive. Both in terms of existing biology and riparian habitats, and what has been observed on the subject lands.
BIOLOGIC CONDITIONS:	I did not review a Biological Survey detailing possible biological species on the subject land. Based on information provided by the client, vegetation includes Semi-desert grassland, Chamise chaparral, and Elizabeth Lake Gum plant. There were other types of vegetation not listed, but common to this region. Further biologic studies and reports prepared by an expert in this field may be prudent to resolve any environmental issues regarding the presence or continued occupancy of an endangered species. No responsibility is assumed for any adverse conditions, or any expertise or knowledge required to discover them.
SIGNIFICANT NATURAL RESOURCES:	The subject property does contain significant natural resources. Rogers Creek is located on the northern portion of Planning Area 1. As previously mentioned, vegetation includes Semi-desert grassland, Chamise chaparral, and Elizabeth Lake Gum plant.
ENCUMBRANCE / EASEMENTS:	Other than what I noted, there were no other adverse encumbrances or easements. I did not review a preliminary title report. However, based on my inspection I believe there are easements for utility access. No other adverse easements were observed. Please reference Limiting Conditions and Assumptions.
SITE COMMENTS:	The subject lots are located within the of the City of Palmdale, west of State Route 14 within Los Angeles County. This area has experienced rural residential growth over the past decade. Continued residential development within the immediate area is considered a conforming land use.

RITTER RANCH CONCEPTUAL SITE PLAN

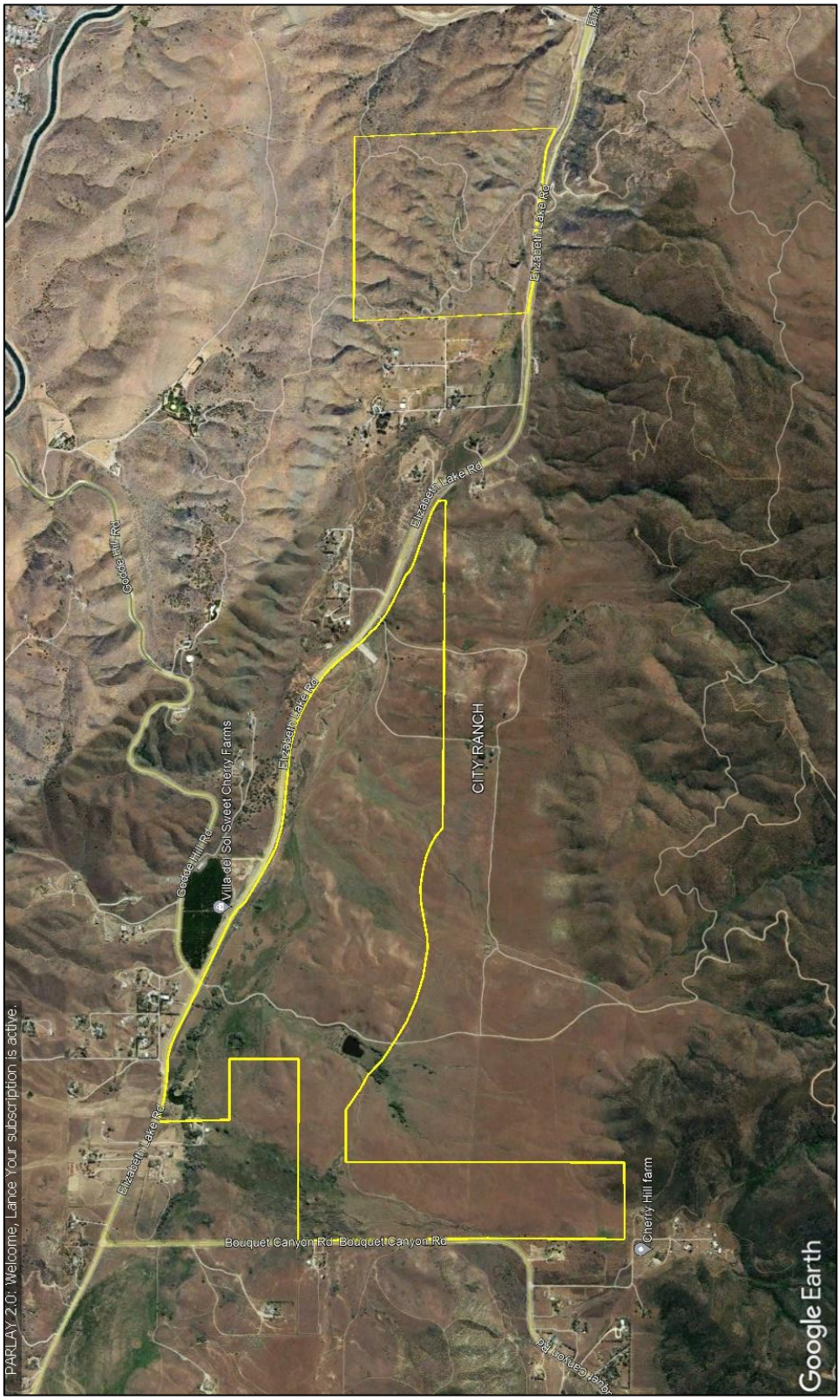


TRANSFER SITE PLAN



Please note, dotted red outlines indicate the areas that are subject to this appraisal report.

SUBJECT AERIAL



ZONING

LAND USE CONTROLS

ZONING CODE:	SP (Specific Plan - Ritter Ranch)
OVERVIEW:	The Ritter Ranch Specific Plan provides a comprehensive approach toward master planned development. It defines the goals, objectives and development standards which will serve to guide the buildout of Ritter Ranch. The Specific Plan is designed as both policy and regulatory document.
PROPOSED DENSITY OF USE:	Planning Area 1 (portion): 1 du./acre Planning Area 3: 0.23 du./acre
CURRENT USE LEGALLY CONFORMING:	The subject is vacant land. Thus, the current use is deemed legally conforming.
ZONING CHANGE LIKELY:	A zoning change is unlikely.
SET BACK DISTANCE:	Not Known
DEVELOPMENT ENTITLEMENTS:	The Ritter Ranch Specific Plan was approved in 1992; however, development of the subject lands will be subject to subsequent entitlement approvals and California Environmental Quality Act (CEQA) review.
ZONING COMMENTS:	Permitted uses within the specific plan include residential, open space, and commercial uses. The subject lands have not yet been subdivided into lots and the subject lands are currently vacant. I noted that the sizes of these residential lots would not facilitate further subdivision.

ASSESSMENT AND TAXES

California taxation law requires a 1% of market value tax rate (plus additional assessments) determined through individual communities' bond indebtedness (Proposition 13). Actual assessments are typically based on the fair market value as determined by the most recent acquisition price. Future assessments are based upon the most recent acquisition price until additional improvements (land and/or homes) are constructed onsite or a subsequent change of ownership of the property or portions thereof. Subsequent annual tax increases are limited to a maximum of 2% per year. Disposition of the property, as of the date of appraisal, would place the subject under Proposition 13 guidelines. Recent trends in property taxation laws seem to be of similar nature with no immediate changes anticipated.

TAXING AUTHORITY: Los Angeles County

ASSESSMENT YEAR: 2022-2023

REAL PROPERTY TAX AND ASSESSMENTS TAX YEAR 2022-2023								
Assessor's Parcel No.:	3206-007-001	3205-002-053	3205-002-028	3206-005-008 (portion)	3206-006-028 (portion)	3206-025-001 (portion)	3205-002-051	Totals
Tax Rate Area:	17133	17133	17133	17133	17133	17133	17133	--
Base Tax Rate:	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	--
Assessed Value								
Land	$603,840	$684,420	$195,840	$2,965,140	$1,760,520	$1,384,772	$136,680	$7,731,212
Improvements	$0	$0	$0	$0	$0	$0	$0	$0
Personal Property	$0	$0	$0	$0	$0	$0	$0	$0
Exemption	$0	$0	$0	$0	$0	$0	$0	$0
Total Assessed Value	**$603,840**	**$684,420**	**$195,840**	**$2,965,140**	**$1,760,520**	**$1,384,772**	**$136,680**	**$7,731,212**
Base Tax*	**$6,038.40**	**$6,844.20**	**$1,958.40**	**$29,651.40**	**$17,605.20**	**$13,847.72**	**$1,366.80**	**$77,312**
Additional Tax Charges								
Total Additional Tax Charges	**$5,712.90**	**$5,746.73**	**$2,776.05**	**$19,631.54**	**$11,222.32**	**$14,814.28**	**$2,429.23**	**$62,333.05**
Total Base Tax & Addnl' Tax Charges	$11,751.30	$12,590.93	$4,734.45	$49,282.94	$28,827.52	$28,662.00	$3,796.03	$139,645
Effective Tax Rate	1.946%	1.840%	2.418%	1.662%	1.637%	2.070%	2.777%	1.81%

COMMENTS:

The appraised value was based on the assumption that there were no tax liens affecting the subject property. Per the Los Angeles County Treasurer-Tax Collector, the subject property was current in their property taxes.

SUBJECT PHOTOGRAPHS

Facing east along Elizabeth Lake Road

Facing west along northern portion of the subject property

Southern view of subject lands

Southwest view towards mountains and rolling terrain

HIGHEST AND BEST USE

Highest and best use may be defined as:

> *"The reasonably probable use that produces the most benefits and highest land value at any given time."* [7]

Traditionally, I considered the four highest and best use tests, which are summarized as:

1. ***Legally Permissible:*** *What uses are permitted by zoning and other legal restrictions?*
2. ***Physically Possible:*** *To what use is the site physically adaptable?*
3. ***Financially Feasible:*** *Which possible and permissible use will produce any net return to the owner of the site?*
4. ***Maximally Productive.*** *Among the feasible uses which use will produce the highest net return, (i.e., the highest present worth)?*

HIGHEST AND BEST USE OF THE SITE

LEGALLY PERMISSIBLE

As discussed in the Land Description and Zoning sections of this report, the subject development falls under the zoning district: SP (Specific Plan - Ritter Ranch). The Specific Plan allows for a robust level of development for the overall 10,625 acres. The subject specific lands have been set aside for uses that include residential, open space, and commercial uses. This is consistent and supported by the subject's historical use as vacant land. The proposed single-family residential development appears to be a legal and conforming use. The subject lands have been approved for these development purposes via the specific plan but would require further entitlements prior to development.

PHYSICALLY POSSIBLE

As of the date of value, the subject property was vacant land with physically and legally defined paved and dirt road access. The subject land is physically able to support various types of development considering available utilities and surrounding nearby infrastructure.

From the subject's upper elevations, there are unobstructed views of the surrounding area. Based on our inspection, there did not appear to be any evidence of subsidence or other soil problems that would be considered prohibitive to any of the legally permissible uses. Development of the

[7] *The Appraisal of Real Estate*, 14th Edition, Appraisal Institute, 2013: Chicago, p. 333

subject land is not limited by parcel size or shape and utility services, once extended, would be adequately provided by public and/or private systems. Therefore, the aforementioned legally permissible use(s) (residential, limited commercial, and passive recreation) are physically possible.

FINANCIALLY FEASIBLE

Any proposed use that supports a positive land value is considered financially feasible. As previously discussed, residential, limited commercial, and open space/recreation are all legally permissible and physically possible uses of the subject land. In this section, these uses are considered in terms of their financial feasibility.

SCENARIO 1 – RESIDENTIAL DEVELOPMENT

It is beyond the scope of this analysis to determine the exact amount of residential lots that would be allowed on the subject land; but given the current lot configuration it is reasonable to accept the maximum number of residential dwellings would be 520, with an average developable lot size of approximately 1.257 acres, which is estimated by taking the estimated land area (652.00 acres) and dividing it by the number of developable lots (520). Based on the legal and physical attributes of the subject, residential development is deemed a financially feasible use. Based upon my investigation and analysis, it is financially feasible to extend utilities and physical access as residential uses will add value to the subject land.

SCENARIO 2 (RECREATIONAL)

Another appropriate and consistent use of the subject property is to retain the land for designated recreational areas. There is adequate demand for recreational land from various private conservation companies (i.e., The Nature Conservancy, The Trust for Public Land, etc.) and public agencies (i.e., U.S. Fish and Wildlife, State of California, etc.) resulting in added value to the land. Therefore, passive recreational land is considered a financially feasible use of the subject property.

CONCLUSION

Any proposed use that supports a positive land value is considered financially feasible. I noted that residential and recreational land uses are the only financially feasible use of the subject property at this time.

MAXIMALLY PRODUCTIVE

The maximally productive use is that which will produce the highest net return (i.e., the highest present worth) of the land. The subject's physical attributes (i.e., topography, limited and/or incomplete access and utilities, etc.) result in a significant investment of time and money in order to facilitate residential development. I concluded that recreation (often represented by conservation proposed land) is also a financially feasible use for the subject lands. However, the maximally productive use of the subject is determined by the highest net return to the land.

To determine the highest net return, I surveyed future residential land sales and compared them with recreational land sales. As configured the subject reflected a total of 520 future residential lots. One of the most significant comparative attributes with future residential land is the stage of entitlement at the time of sale. I located six comparables that reflected future residential land uses. These sales were used in our analysis, and they ranged from $72,435 to $107,724 per entitled lot. Additionally, I also researched recent sales of finished residential lots in Los Angeles County that have similar location attributes to the subject. This includes locations within newer gated communities and within high desert areas. I found seven recent land lot sales ranging in size from 0.47 to 2.57 acres, located primarily in areas surrounding the subject (Newhall, Santa Clarita, Palmdale, Saugus, and Canyon Country).

Please note, the residential land development (Ritter Ranch SPA for 520 lots) provides allowances for open space. This is a condition of approval. Many of the residential land sales had set asides for conservation/open space; and many of the conservation-based sales had allowed uses for residential. Ultimately the defining use was determined by the buyer profile.

HIGHEST AND BEST USE AS IMPROVED

As the subject is vacant land, an analysis of the Highest and Best Use as Improved is not warranted.

MOST PROBABLE BUYER

Taking into account all of the physical and investment characteristics of the subject property, the likely buyer is a local investor or developer.

VALUATION METHODOLOGY

Three basic approaches may be used to arrive at an estimate of market value. They are:

1. The Cost Approach
2. The Income Approach
3. The Sales Comparison Approach

COST APPROACH

The Cost Approach is summarized as follows:

Cost New
- Depreciation
<u>+ Land Value</u>
= Value

INCOME APPROACH

The Income Approach converts the anticipated flow of future benefits (income) to a present value estimate through a capitalization and or a discounting process.

SALES COMPARISON APPROACH

The Sales Comparison Approach compares sales of similar properties with the subject property. Each comparable sale is adjusted for its inferior or superior characteristics. The values derived from the adjusted comparable sales form a range of value for the subject. By process of correlation and analysis, a final indicated value is derived.

FINAL RECONCILIATION

The appraisal process concludes with the final reconciliation of the values derived from the approaches applied for a single estimate of market value. Different properties require different means of analysis and lend themselves to one approach over the others.

METHODOLOGIES APPLIED

The Cost Approach was considered and was not developed because the subject is unimproved land. The Sales Comparison Approach was considered and was developed because there is adequate data to develop a value estimate and this approach reflects market behavior for this property type. The Income Approach was considered and was not developed because the subject is not an income production property and this approach does not reflect market behavior for this property type. However, a method to value known as a Land Residual, or Subdivision Analysis uses a discounted cash flow model to support the present value of a “for sale” lot program. This method is similar to an income approach.

SALES COMPARISON APPROACH – BULK LAND VALUE

The Sales Comparison Approach is based on the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership. It is based on the principles of supply and demand, balance, substitution and externalities.

LAND COMPARABLES

In general, vacant tracts of residential land with development entitlements do not sell frequently. From 2018 through the date of value, an in-depth search turned up only a limited number of closed sales.

The Highest and Best Use analysis provided the foundation for locating comparables for use in the sales comparison approach. The conclusions of the Highest and Best Use analysis supported a reasonable, probable, and consistent use of the subject property for residential land use. I searched for comparables with a similar highest and best use and overall orientation as the subject land. They included parcels of land that were purchased for residential development, or retained as such. However, in either scenario the underlying highest and best use is the same.

I have researched a total of six comparables for this analysis. These comparables are documented on the following pages followed by a location map and an analysis grid. All comparables have been researched through numerous sources (including, but not limited to, the county recorder's office, market data services, published reports, and personal contacts).

Comparisons of the comparables are made to the subject relative to differences or similarities in time, location, physical characteristics, and sales conditions. Percentage or dollar adjustments are then made to the selling and/or listing price of each comparable for property rights, financing, time of sale, and unusual sales conditions; quantitative comparisons are made for physical differences between each comparable and the subject. A range of values results from this approach. I correlate the range into a final value by selectively rating the comparables as to their overall comparative value.

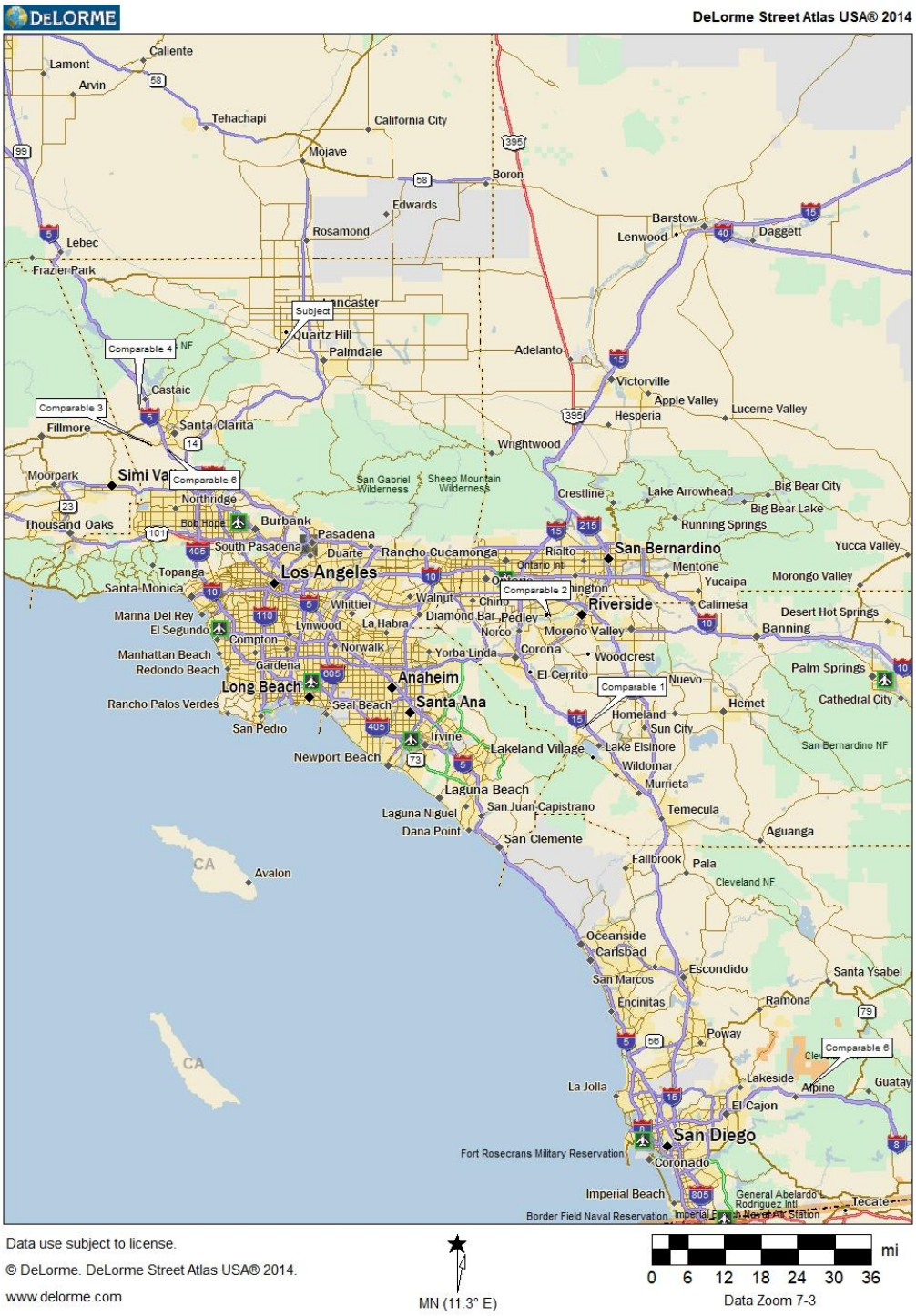
It is not the goal to find only the most similar comparables. It is also helpful to find comparables that are obviously superior and inferior to the subject to provide an orientation for the most probable value. This technique is called “bracketing” and provides strong technical reasoning for the concluded value. An example of bracketing a value for land is shown below. Here I demonstrate the logic of finding comparables with inferior, similar, and superior characteristics. When this is done correctly, the reconciled value can be reasonably concluded.

COMPARABLE BRACKETING				
Characteristi	Subject	Comp 1	Comp 2	Comp 3
Price	N/Ap	$100,000	$150,000	$180,000
$ / Acre	N/Ap	$10,000	$15,000	$18,000
Topography	Rolling	Steep	Rolling	Level
Access	Paved Road	Dirt Road	Paved Road	Paved Road
Overall Comparison		**Inferior**	**Similar**	**Superior**

On the following pages is a summary table followed by a land comparable location map, photographs, and our comparative analysis.

Land Comparables Summary								
Comp	Address City	Date Assessor Parcel No	Book/Page or Price	Land Units Price Per Land Unit	Zoning Access	Financing Conditions of Sale	Utilities Topography	Sale Comments
1	S/O Nichols Rd; E/O Alberhill Ranch Road Lake Elsinore	5/11/2022 389-090-015, -012, 389-121-001, -002, -003	219460 $37,057,000	344 $107,724	SP Average; Paved to Site; Interior Dirt	Conventional Normal	Require Extension Level to Rolling	This property sold on May 11, 2022 to Pulte Home Company for $37,057,000, or $107,724 per unit. At the time of sale, the property was entitled to develop 344 single-family residences. The density of the site is 2.72 dwelling units per acre and the site is located within a larger overall single-family development corridor. Access is good via paved roads with easy access to Interstate 15. Lake Elsinore is located under two miles south of the site.
2	6501 Clay Street Jurupa Valley	12/8/2021 163-400-001, -002, -052	724419 $22,200,000	254 $87,402	R-4 Good; Paved to Site; Interior Dir	Conventional Normal	Require Extension Level to Rolling	This property sold on December 8, 2021 for $22,200,000, or $87,402 per lot. The site was entitled for the development of 254 homes and public space. The density of the development is 3.77 dwelling units per acre. The site has level to rolling topography and good, paved access. The site had previously been purchased in 2018 for $8,950,000 prior to the approval of entitlements.
3	Pico Canyon Road Stevenson Ranch	4/30/2018 2826-020-023 et al	20180417097 $10,450,000	102 $102,451	LCA22 Average; Paved to Site; Interior Dirt	Conventional Normal	Available but require extension Level to Rolling	This property sold on April 30, 2018 for $10,450,000, or $102,450 per lot. The property was sold to Lennar Homes of California with plans, maps, and engineering already approved. The buyer plans of breaking down the site into residential, open space, and other public uses. 102 dwelling units were approved on 61 acres of this land, bringing the overall density of residential to 1.67 dwelling units per acre. Some of the acreage was donated to the City of Santa Clarita, who will manage the open space areas.
4	N/O Hasley Canyon Road Castaic	2/28/2020 3247-032-052 et al	20200240486 $36,000,000	497 $72,435	LCA22 Average; Paved to Site; Interior Dirt	Conventional Normal	Available but require extension Rolling to Steep	This property sold on February 28, 2020 to WH Castaic 497 LLC for $36,000,000, or $72,435 per lot. The property was fully entitled at the time of sale for the purposes of a master planned community with 497 dwelling units. The entire site is 423.31 acres, but 189 acres will be set aside for open space. The overall density is 2.12 dwelling units per acre.
5	Blackwolf Drive Alpine	3/26/2018 404-011-08, 402-341-04	2018-0117567 $2,400,000	27 $88,889	A70 Average; Dirt	Cash Normal	Available at property boundary Level to Rolling	This property sold on March 26, 2018 for $2,400,000 to Blackwolf 2 Partners, L.P. At the time of sale, approvals were already in place for 27 individual units. A total of 140.06 acres were used for open space mitigation, leaving the overall density of the units at 1 dwelling per 0.68 acres. The site is located in the area of Alpine, within San Diego County. Utilities are available at the property boundary, and topography is rolling to steep.
6	24925 The Old Road Newhall	8/11/2020 2826-023-014 et al	20200926469 $15,000,000	182 $82,418	LCA22 Average; Paved to Site; Interior Dirt	Conventional Normal	Available but require extension Level to Rolling to Steep	This property sold on August 11, 2020 to Nuwi-Lyons Canyon LLC for $15,000,000, or $82,408 per unit. The sale is comprised of 180 gross acres of raw land that was fully entitled for 91 single-family lots and 91 townhomes; however, the buyer planned to re-entitle the property but are still in the planning phase. The property contains no environmental concerns.

COMPARABLE LOCATION MAP



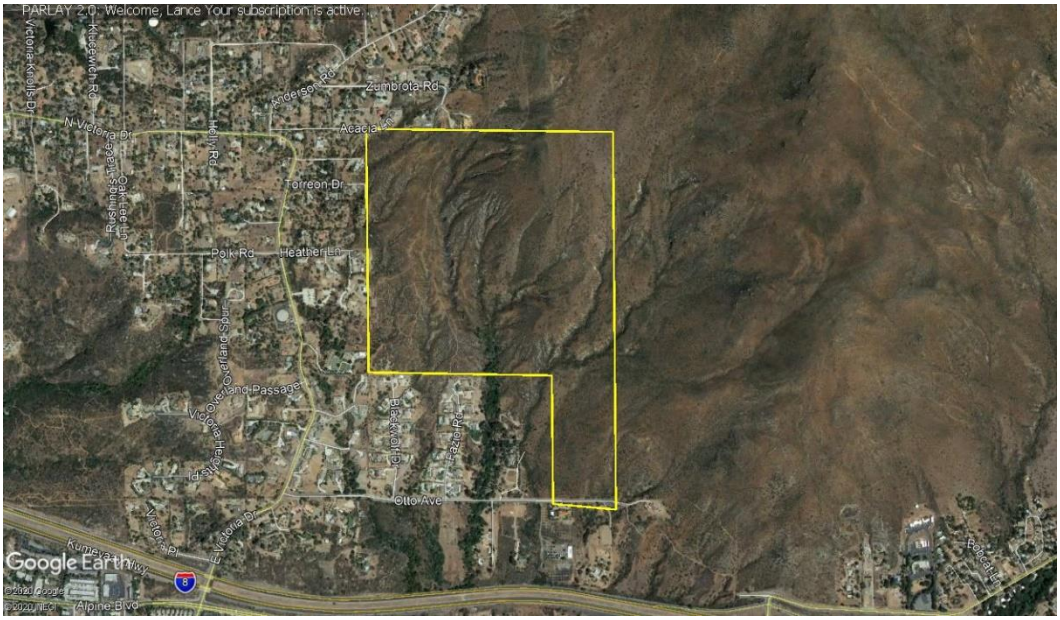
LAND COMPARABLE PHOTOGRAPHS

Land Comparable 1

Land Comparable 2

Land Comparable 3

Land Comparable 4



Land Comparable 5

Land Comparable 6

THE COMPARISON PROCESS

In the comparison process, I take into consideration the financial and physical differences between each comparable and the subject. Categories of adjustment and/or comparison include: 1) property rights conveyed; 2) terms of sale; 3) conditions of sale; 4) buyer expenditures; 5) market conditions; and, 6) physical characteristics (including location, utilities, zoning, terrain, density (acres per dwelling unit), access, significant land attributes, stage of development, and development entitlements.

The comparables were analyzed on a per lot basis, which is the most applicable unit-of-comparison for entitled parcels of residential land. Each comparables' lot figure was obtained from public records, published sales information, and/or other reliable sources. Once the per lot value indicator was estimated, it was applied to the subject property.

The comparison process is fairly subjective in nature primarily due to the many characteristics of value, variances in buyer/seller influences, imperfections in the market, etc. Adjustments and/or comparisons are an attempt to reflect value contributions of the various factors in the marketplace. Many of the comparisons of physical characteristics overlap and reflect overall desirability. The comparison grid on the following page is an empirical format to simply lead the reader to a logical conclusion of the final estimated value.

PROPERTY RIGHTS

The property right appraised was the fee simple estate. All of the comparables transferred (or were marketing) the fee simple interest; thus, no adjustments for property rights were warranted.

FINANCING (TERMS OF SALE)

Financing (terms of sale) include below market rates, buy downs, atypical payback periods, or any financing situations that are not commonly accepted within the marketplace. In the subject market, land is typically purchased with all cash, or the seller takes back a first trust deed with a large (20%-50%) down payment. In this case, all of the closed sales involved cash to the seller or were sold via conventional terms, thus no adjustments were warranted.

CONDITIONS OF SALE

Conditions of sale include any distressed influences, less than arm's length transactions, or other related influences that are not attributable to financing/terms of sale, market conditions, or physical differences. None of the closed sales had any atypical conditions of sale, thus no further adjustments were warranted.

BUYER EXPENDITURES

A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because these costs affect the price they agree to pay. Such expenditures may include the cost to demolish and remove buildings, petition for a zoning change, remediate environmental

contamination, extend escrow, pay broker fees, among others. No atypical buyer expenditures were discovered during the verification process; thus, no adjustments were warranted.

MARKET CONDITIONS

Market conditions adjustments take into consideration appreciation or depreciation that has occurred in the market. In general, sales of vacant large land tracts in the Los Angeles market have been limited.

The available market evidence does not support a market conditions adjustment for this type of land. The comparables sold between March 2018 and May 2022 and no adjustments were warranted.

PHYSICAL CHARACTERISTICS

After adjusting for the above non-physical characteristics, I compared the physical differences of the comparables to the subject. There is a myriad of physical features that can be reviewed by investors when purchasing vacant land. However, the features discussed below represent those that generally have the greatest effect on value or are most often a consideration. Note that location, topography, density (Du/Ac), access, stage of development and entitlements generally have a stronger impact on value than the remaining categories. Quantitative comments were made regarding any differences noted.

LOCATION

When looking at location, I take into consideration a property's orientation to the surrounding area including proximity to local services and perceived desirability/market demand. The subject property is located in the City of Palmdale, in North County Los Angeles. Specifically, the subject lands are east of Palmdale proper, between Palmdale and Santa Clarita. This area is characterized by rural residential land uses, with an average proximity to area services. Land Comparable 5 was located in the outskirts of Alpine, in San Diego County. This location was deemed slightly inferior. Land Comparable 1 was located in Lake Elsinore, with good access to the lake amenity. This is considered superior. Land Comparable 3 was located in Stevenson Ranch and was considered superior. Land Comparable 6 was located in Newhall, just outside of Santa Clarita and was considered superior. In comparison to the subject, all of the remaining land comparables were deemed similar in terms of location.

TOTAL NUMBER OF UNITS/ENTITLEMENTS

The total number of allowed units within any development project indicates overall final value; however, the higher number of units within any particular development community generally has a higher overall cost for development. The higher the number of units involved in residential development dictates higher costs. The subject property is assumed to be entitled for the development of 520 single-family units. Land Comparable

5 is entitled to develop 27 units and is considered slightly superior. The remaining comparables range from 102 to 497 units and are considered similar.

Density (Dwelling Units Per Acre)

In this category, I considered the density of the subject in comparison to the land comparables. Intuitively, it is reasonable to expect that residential developments with more acreage will sell for higher prices. Lower density projects reflect larger lots and the price per unit typically is higher for these projects. Conversely, higher density projects typically reflect a lower price per unit.

The development density of the subject was estimated at 0.80 dwellings per acre (calculated by finding the average lot size). The land comparables reflected density levels ranging from 0.68 to 6.06 dwelling units per acre. Comparables 2 and 6 had average densities between 3.77 and 6.06 dwelling units per acre. These are overall smaller site sizes and are considered inferior. Comparables 1 and 4 had densities of 2.72 and 2.12 dwellings per acre, respectively, and were considered slightly inferior. The remaining comparables had average densities of between 0.68 and 1.67 and were considered similar.

Zoning

Zoning reflects a property's allowed uses and usable area for development. The subject's zoning allows for rural residential land uses. All of the land comparables allowed for residential development, thus were deemed similar to the subject in zoning attribute.

Access

Access reflects the availability and quality of offsite roads. The subject property has legally defined access via Elizabeth Lake Road. Interior access is provided by dirt roads. Overall, access to the subject is considered average for this area. Land Comparable 4 had good access via primarily paved roads and was considered slightly superior. In comparison to the subject all of the remaining land comparables reflected good accessibility and are considered similar.

Sales Comparison Approach Conclusion

A total of six land comparables were used in the sales comparison approach to land value. The comparable data were sufficient in quality and quantity to estimate the subject's market value with many physical and non-physical characteristics analyzed in the valuation process.

The comparables had an unadjusted price per lot range from $72,435 to $107,724 per lot. There were no adjustments for property rights, financing, conditions of sale, market conditions, or buyer expenditures. Therefore, the price per lot remained the same.

Our qualitative land analysis is arrayed in the following table:

VALUATION ARRAY TABLE		
Comparable	Comparability to Subject	$/Lot
1	Superior	$107,724
3	Superior	$102,451
5	Sl. Superior	$88,889
2	Sl. Superior	$87,402
Subject		$85,000
6	**Similar**	**$82,418**
4	Inferior	$72,435

All of the value indications have been considered; however, Land Comparable 6 was considered to be the most similar and was given the most weight in our final analysis. Therefore, I reconciled a per lot value figure of $85,000. The remaining land comparables provide additional support for our reconciled market value. The land value is estimated as follows:

Bulk Market Value	
NUMBER OF SUBJECT LOTS:	520
INDICATED PRICE PER LOT:	$85,000
INDICATED VALUE:	$44,200,000
INDICATED VALUE (RD.):	$44,200,000
Forty-Two Million Two Hundred Thousand Dollars	

Please note, this reflects entitled land. While the subject area is in an SPA, it is not entitled. Additional costs for Risk (21% includes profit) in order to achieve entitlements and fees and permits (per client) are deducted. This totals $56,779 per lot. This is shown as follows:

Bulk Market Value	
NUMBER OF SUBJECT LOTS:	520
INDICATED ENTITLED PRICE PER LOT:	$85,000
LESS FEES AND PERMITS PER LOT:	$38,929
LESS 25% OF ENTITLED PER LOT:	$17,850
SUBTOTAL:	$28,221
ADJUSTED PER LOT (RD.):	$28,200
NUMBER OF SUBJECT LOTS:	520
INDICATED VALUE:	$14,664,000
INDICATED VALUE (RD.):	$14,660,000
Fourteen Million Six Hundred Sixty Thousand Dollars	

Land Comparables Adjustment Grid													
Land Analysis Grid		Comp 1		Comp 2		Comp 3		Comp 4		Comp 5		Comp 6	
Address	Elizabeth Lake Road	S/O Nichols Rd; E/O Alberhill Ranch Road		6501 Clay Street		Pico Canyon Road		N/O Hasley Canyon Road		Blackwolf Drive		24925 The Old Road	
City	Palmdale	Lake Elsinore		Jurupa Valley		Stevenson Ranch		Castaic		Alpine		Newhall	
State	CA	CA		CA		CA		CA		CA		CA	
Date	8/1/2023	5/11/2022		12/8/2021		4/30/2018		2/28/2020		3/26/2018		8/11/2020	
Price	--	$37,057,000		$22,200,000		$10,450,000		$36,000,000		$2,400,000		$15,000,000	
Land Units	520	344		254		102		497		27		182	
Price Per SF	$0	$107,724		$87,402		$102,451		$72,435		$88,889		$82,418	
Transaction Adjustments													
Property Rights	Fee Simple	Fee Simple	0.0%	Fee Simple	0.0%	Fee Simple	0.0%	Fee Simple	0.0%	Fee Simple	0.0%	Fee Simple	0.0%
Financing	Conventional	Conventional	0.0%	Conventional	0.0%	Conventional	0.0%	Conventional	0.0%	Cash	0.0%	Conventional	0.0%
Conditions of Sale	Normal	Normal	0.0%	Normal	0.0%	Normal	0.0%	Normal	0.0%	Normal	0.0%	Normal	0.0%
Adjusted Price per Unit		**$107,724**		**$87,402**		**$102,451**		**$72,435**		**$88,889**		**$82,418**	
Market Trends Through	8/1/2023 0.0%	0.0%		0.0%		0.0%		0.0%		0.0%		0.0%	
Adjusted Price per Unit		**$107,724**		**$87,402**		**$102,451**		**$72,435**		**$88,889**		**$82,418**	
Subsequent Trends Ending	8/1/2023 0.0%	0.0%		0.0%		0.0%		0.0%		0.0%		0.0%	
Adjusted Price per Unit		**$107,724**		**$87,402**		**$102,451**		**$72,435**		**$88,889**		**$82,418**	
Location	Average	Good		Average		Good		Average		Remote; San Diego County		Good	
Comparison		Superior		Similar		Superior		Similar		Sl. Inferior		Superior	
Acres	652.00	138.40		67.38		230.50		423.31		179.74		180.00	
Comparison		Similar		Sl. Superior		Similar		Similar		Similar		Similar	
Topography	Level to Rolling to Steep	Level to Rolling		Level to Rolling		Level to Rolling		Rolling to Steep		Level to Rolling		Level to Rolling to Steep	
Comparison		Sl. Superior		Sl. Superior		Sl. Superior		Sl. Inferior		Sl. Superior		Similar	
Access	Average; Paved to Site, Interior Dirt	Average; Paved to Site; Interior Dirt		Good; Paved to Site; Interior Dir		Average; Paved to Site; Interior Dirt		Average; Paved to Site; Interior Dirt		Average; Dirt		Average; Paved to Site; Interior Dirt	
Comparison		Similar		Sl. Superior		Similar		Similar		Similar		Similar	
Utilities	Require Extension	Require Extension		Require Extension		Available but require extension		Available but require extension		Available at property boundary		Available but require extension	
Comparison		Similar		Similar		Similar		Similar		Similar		Similar	
Zoning	SP	SP		R-4		LCA22		LCA22		A70		LCA22	
Comparison		Similar		Similar		Similar		Similar		Similar		Similar	
Zoned Density	0.80 du./Acre	2.72 du./Acre		3.77 du./Acre		1.67 du./Acre		2.12 du./Acre		0.68 du./Acre		6.06 du./Acre	
Comparison		Sl. Inferior		Inferior		Similar		Sl. Inferior		Similar		Inferior	
Entitlements At Time of Sale	520 Units	Fully Entitled 344		Fully Entitled 254		Fully Entitled 102		Fully Entitled 497		Fully Entitled 27 units		Fully Entitled 182	
Comparison		Similar		Similar		Similar		Similar		Sl. Superior		Similar	
Overall Comparison		**Superior**		**Sl. Superior**		**Superior**		**Inferior**		**Sl. Superior**		**Similar**	
Adjusted Price per Unit		**$107,724**		**$87,402**		**$102,451**		**$72,435**		**$88,889**		**$82,418**	

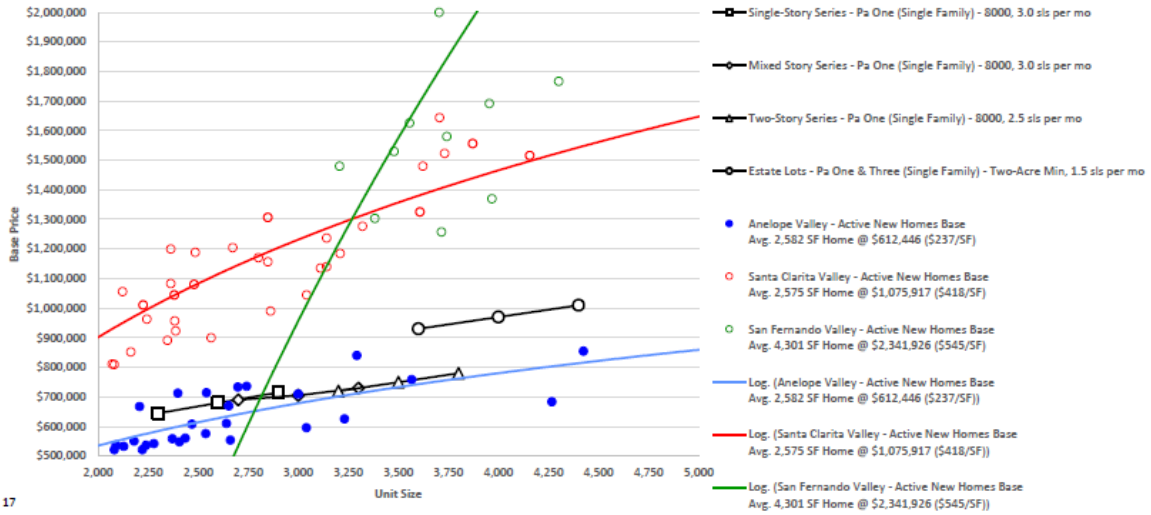
DISCOUNTED CASH FLOW LAND RESIDUAL

The next portion of my analysis is the development approach to value. This approach uses the analysis completed by Zonda (See Addenda for Full Report). Zonda completed a detailed market overview, unit mix, pricing schedule and absorption. Key conclusions are as follows:

- Average Base Price - $754,327
- Average Total Price (inc. premiums and options) $822,216
- Four Product Lines 8,000 to 2 acre lots
- Average Unit Size 3,184 square feet.
- Absorption 1.5 to 3 units per month.

Project/Subdivision	Hypothetical PA Location (per Zonda)	Configuration	Total # of Units	Est % of Total Units	Average Unit Size	Base Price	Incentives: Price Reduction	Incentives: Options/ Upgrades	Typical Spending: Options / Upgrades	Typical Spending: Lot Premiums	Estimated Closing Price	Existing Closing $/SF	Est. Sales Rate
Single-Story Series - Pa One	PA 1H - 116 Lots PA 1I - 33 Lots (split)	8000	149	29%	2,602	$680,235	$0	$0	$40,814	$20,407	$741,456	$285	3.00
Mixed Story Series - Pa One	PA 1L -71 Lots PA 1J - 76 Lots	8000	147	28%	3,000	$708,333	$0	$0	$42,500	$21,250	$772,083	$257	3.00
Two-Story Series - Pa One	PA 1K - 106 Lots PA 1I - 33 Lots (split)	8000	139	27%	3,502	$750,216	$0	$0	$45,013	$22,506	$817,735	$233	2.50
Estate Lots - Pa One & Three	PA 1B - 49 Lots PA 3A - 36 Lots	Two-Acre Min	85	16%	4,005	$970,471	$0	$0	$58,228	$29,114	$1,057,813	$264	1.50
Community Summary			520	100%	3,184	$754,327	$0	$0	$45,260	$22,630	$822,216	$260	--

The Zonda report brackets the proposed pricing levels at the medium to lower end of the competitive product (Subject shown in Black). The subject is priced below the superior Santa Clarita and San Fernando Valley areas, and just above the Antelope Valley (Desert Region).



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Overall, the Zonda conclusions regarding unit mix, pricing and absorption are well supported and I have relied upon these conclusions for the Discounted Cashflow Analysis.

DISCOUNTED CASH FLOW ANALYSIS IN SUBDIVISION DEVELOPMENT ANALYSIS – 520 HOMES

A discounted cash flow analysis may be applied in subdivision analysis to estimate raw land value as entitled (See Extraordinary Assumption). Subdivision development analysis can also be used to estimate the value of completed homes, condominium units, or other types of property that is commonly subdivided. The projection of income and absorption in discounted cash flow analysis allows us to develop an opinion of value at the point in the development timeline that is appropriate for our assignment; in this case, on the date of inspection, August 2023.

In the subject's case, it is assumed the project is entitled for 520 homes. This assumes a large subdivision with platted and all final engineering, improvement and landscape plans, and environmental permits. Grading permits would be complete as of the date of value.

After permitting and construction are completed, a 5-year absorption period is estimated sell off the homes. This allows for the 1st year for site development ($59,604 per lot for finishing costs and intact utility extensions) as well as upfront expenses for the proposed CFD of $10,417 per unit).

DEVELOPER'S PROFIT AND DISCOUNT RATE

For appraisal purposes, the rate of return, or yield rate, should represent the annual rate of return necessary to attract investment capital. Such a rate is influenced by many considerations, including the degree of apparent risk, market attitudes with respect to future inflation, the prospective rates of return for alternative investment opportunities, historical rates of return earned by comparable properties, supply, and demand for mortgage funds, etc. Although it is not possible to prove conclusively the suitability of a particular rate of return on the basis of market evidence, the chosen rate should be consistent with the available evidence. Rate selection requires appraisal judgment and knowledge concerning prevailing market attitudes and economic indicators.

The appropriate discount rate for the subject analysis must reflect that this real estate investment constitutes a "Sell-Out" property. Discount rates for real estate subdivision analyses are much higher than for typical real estate holdings based on income from rent. The income derived from sell-out properties, whether they involve residential, commercial, or industrial products, includes entrepreneurial profit on the costs associated with project development and marketing.

Published surveys and discussions regarding investor requirements for profit subdivision development typically find that real estate developers are seeking profit margins in the 10% to 30% range. It is common to see analyses that reflect developer profit in the 10% range. Discount

rates for subdivision analysis will range depending upon the location of the proposed project and the regional and microeconomics associated within the competitive market area.

Sources for published data on current investor requirements for land development and sell-off properties in general are very limited at the present time. Our research indicates land investors report discount rate requirements in the 18.21% to 37.58% range, averaging approximately 26.22%.

According to the 1st Quarter 2023 Realty Rates Developer Survey, the following summarizes discount rates for conventionally financed (interest-only interim or construction financing) subdivisions and planned unit developments (PUDs) nationwide. Actual Rates are historical rates achieved by survey respondents, while Pro-Forma Rates reflect forward-looking revenue and expenses. Developer's profit is not treated as a line-item expense. There is strong support for 500+ Units at 33% which is well bracketed by the data.

RealtyRates.com DEVELOPER SURVEY - 1st Quarter 2023*
California/Pacific Islands - Subdivisions & PUDs

	Actual Rates			Pro-Forma Rates		
	Min	Max	Avg	Min	Max	Avg
Site-Built Residential	17.35%	37.90%	25.63%	16.65%	36.39%	24.61%
-100 Units	17.35%	32.67%	24.51%	16.65%	31.37%	23.53%
100-500 Units	17.78%	35.94%	25.79%	17.07%	34.50%	24.75%
500+ Units	18.21%	37.58%	26.22%	17.49%	36.07%	25.17%
Mixed Use	18.65%	37.90%	26.01%	17.90%	36.39%	24.97%
Manufactured Housing	17.71%	41.29%	27.37%	17.00%	39.64%	26.27%
-100 Units	17.71%	35.91%	26.27%	17.00%	34.47%	25.22%
100-500 Units	18.15%	39.50%	27.67%	17.43%	37.92%	26.57%
500+ Units	18.60%	41.29%	28.15%	17.85%	39.64%	27.02%
Business Parks	17.67%	38.39%	26.03%	16.96%	36.86%	24.99%
-100 Acres	17.67%	33.39%	25.02%	16.96%	32.05%	24.02%
100-500 Acres	18.11%	36.73%	26.32%	17.38%	35.26%	25.27%
500+ Acres	18.55%	38.39%	26.76%	17.81%	36.86%	25.69%
Industrial Parks	17.77%	33.31%	23.79%	17.06%	31.98%	22.83%
-100 Acres	17.77%	28.97%	22.90%	17.06%	27.81%	21.98%
100-500 Acres	18.21%	31.86%	24.03%	17.48%	30.59%	23.07%
500+ Acres	18.65%	33.31%	24.42%	17.91%	31.98%	23.45%

*4th Quarter 2022 Data

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Expenses are projected as follows:

- Construction costs per home is estimated at $92 per square foot. As noted, site development costs are $59,945 per lot.

- A 6.0% (of sales revenue) marketing and sales expense throughout sell-off period;

- 2.0% (of sales revenue) overhead and administrative fee throughout the absorption period;

The table below summarizes our discounted cash flow analysis to obtain the residual land value for the subject on an average basis without Developer's Profit.

DCF ANALYSIS TO RESIDUAL LAND VALUE							
Yearly Period							Totals
		1	2	3	4	5	
Period Begin Inventory (Single Story - PA1)		149	113	77	41	5	
Period Begin Inventory (Mixed Story - PA1)		147	111	75	39	3	
Period Begin Inventory (Two-Story - PA1)		139	109	79	49	19	
Period Begin Inventory (Estates - PA1 & 3)		85	67	49	31	13	
		520	400	280	160	40	
Periodic Sales (Single-Story)		36	36	36	36	5	149
Periodic Sales (Mixed Story)		36	36	36	36	3	147
Periodic Sales (Two-Story)		30	30	30	30	19	139
Periodic Sales (Estates)		18	18	18	18	13	85
Unsold Inventory		400	280	160	40	0	520
Average Sale Price (Single-Story)		$741,456	$756,285	$771,411	$786,839	$802,576	
Total Sales (Single-Story)		**$26,692,416**	**$27,226,264**	**$27,770,790**	**$28,326,205**	**$4,012,879**	
Average Sale Price (Mixed Story)		$772,083	$787,525	$803,275	$819,341	$835,727	
Total Sales (Mixed Story)		**$27,794,988**	**$28,350,888**	**$28,917,906**	**$29,496,264**	**$2,507,182**	
Average Sale Price (Two-Story)		$817,735	$834,090	$850,771	$867,787	$885,143	
Total Sales (Two-Story)		**$31,734,390**	**$25,022,691**	**$25,523,145**	**$26,033,608**	**$16,817,711**	
Average Sale Price (Estate)		$1,057,813	$1,078,969	$1,100,549	$1,122,560	$1,145,011	
Total Sales (Estates)		**$19,040,634**	**$19,421,447**	**$19,809,876**	**$20,206,073**	**$14,885,141**	
Total Sales Revenue		**$105,262,428**	**$72,795,025**	**$74,250,926**	**$75,735,944**	**$34,210,034**	**$362,254,357**
Construction Hard Costs		$152,322,560	$0	$0	$0	$0	$152,322,560
Finished Site Costs (per lot)	$ 59,604	$23,841,600	$16,689,120	$9,536,640	$2,384,160	$0	$52,451,520
Sales Expense	6.00%	$6,315,746	$4,367,702	$4,455,056	$4,544,157	$2,052,602	$21,735,261
Overhead & Admin.	2.00%	$3,046,451	$1,455,901	$1,485,019	$1,514,719	$684,201	$8,186,290
Taxes	1.900%	$1,999,986	$1,383,105	$1,410,768	$1,438,983	$649,991	$6,882,833
Builder Profit (Not Bifurcated)	0.00%	$0	$0	$0	$0	$0	$0
CFD Special Tax Assessment		$5,416,667	$0	$0	$0	$0	$5,416,667
Total Costs		**$192,943,010**	**$23,895,828**	**$16,887,482**	**$9,882,019**	**$3,386,793**	**$246,995,131**
Net Revenue		**-$87,680,582**	**$48,899,198**	**$57,363,444**	**$65,853,926**	**$30,823,240**	**$115,259,227**
Discount @	33.00%	0.751880	0.565323	0.425055	0.319590	0.240293	
Present Value		-$65,925,249	$27,643,845	$24,382,616	$21,046,269	$7,406,620	**$14,554,101**

Net Present Value Residential Land		**$14,554,101**
Indicated Residual Land Value		**$14,554,101**
	Rounded	**$14,600,000**
Indicated Value Per Unit (RD.)		**$27,990**

DCF Assumptions	
Average Size Unit SF	**3,184**
Total Units	520
CFD per unit	$10,417
Construction Costs/SF (M&S Sec.7 Pg 27)	$92
Total Construction Costs	$152,322,560
Periodic Disc. Factor	33.00%
Tax Rate	1.90000%

As indicated by the discounted cash flow analyses above, the residual land value is $14,600,000 (rounded), or a value per lot of $27,990 per lot.

Please note, the sum retail of units is that combined total sales revenue within the discounted cash flow analysis, or $362,254,357.

As indicated by the discounted cash flow analyses above, the residual land value is $14,600,000 (rounded), indicating a value per lot of $27,990, rounded. This is a 0.41% delta between my reconciled land value within the sales comparison approach and the discounted cash flow analysis.

FINAL RECONCILIATION

The process of reconciliation involves the analysis of each approach to value. The quality of data applied the significance of each approach as it relates to market behavior and defensibility of each approach are considered and weighed. Finally, each is considered separately and comparatively with each other.

The sales comparison approach and the developmental approach were the only methods to value. These two methods were reconciled at $14,660,000 and $14,600,000, respectively. These show a strong correlation between the two methods.

A total of six land comparables were used in the sales comparison approach. The comparable data were sufficient in quality and quantity to estimate the subject's value with many physical and non-physical characteristics analyzed in the valuation process. I compared the subject with land comparables that reflected similar entitlements for residential development. The most consistent unit of comparison was the price per lot. These six land comparables reflected adjusted values from $72,435 to $107,724 per lot. All of these land comparables had a tentative (or final) subdivision map in place and were either in rough graded condition or assumed finished in the pricing level. An additional deduction was made for Risk and Fees/Permits for Entitlements to derive a value of $28,200 per lot, or $14,660,000.

This figure is supported by our discounted cash flow analysis, which was applied to estimate finished lot land value and was based on reasonable expenses, a 5-year absorption period, and a market-derived discount rate. Our concluded value applying a discounted cash flow analysis was $14,600,000 ($27,990 per lot). The Sales Comparison is given less weight due to the limited data for SPA sales but is very supportive of the indicated value.

VALUE CONCLUSION

Based on the data and analyses developed in this appraisal, I have reconciled to the following value conclusion(s), as of August 1, 2023, subject to the limiting conditions and assumptions of this appraisal:

Bulk Market Value	
TOTAL VALUE (RD.):	$14,600,000
PER UNIT:	$27,990

CERTIFICATION STATEMENT

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions and conclusions.
- We have no present or prospective future interest in the property that is the subject of this report, and have no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report, or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP).
- No one provided significant real property appraisal assistance to the person(s) signing this certification.
- We certify sufficient competence to appraise this property through education and experience, in addition to the internal resources of the appraisal firm.
- As of the date of this report, Lance W. Doré, MAI, FRICS has completed the continuing education program for designated members of the Appraisal Institute.
- We have not performed appraisal services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

- Lance W. Doré, MAI, FRICS made an inspection of the subject property.

Respectfully submitted,

Lance W. Doré, MAI, FRICS
President / CEO
AG002464
lwdore@thedoregroup.com

ADDENDA

Land Comparable 1

Transaction			
ID	7115	**Date**	5/11/2022
Address	S/O Nichols Rd; E/O	**Price**	$37,057,000
City	Lake Elsinore	**Price per Acre**	$267,753
State	CA	**Financing**	Conventional
Assessor Parcel No	389-090-015, -012, 389-	**Property Rights**	Fee Simple
Grantor	Alberhill Development	**Current Use**	Vacant
Grantee	Pulte Home Company,	**Legal Description**	Lengthy; retained in TDG

Land			
Acres	138.40	**Topography**	Level to Rolling
Land SF	6,028,704	**Zoning**	SP
Road Frontage	Alberhill Ranch Road	**Zoning Type**	Specific Plan
Shape	Irregular	**Entitlements At Time of**	Fully Entitled 344 Units
Utilities	Require Extension	**Site Drainage**	Adequate

Sale Comments

This property sold on May 11, 2022 to Pulte Home Company for $37,057,000, or $107,724 per unit. At the time of sale, the property was entitled to develop 344 single-family residences. The density of the site is 2.72 dwelling units per acre and the site is located within a larger overall single-family development corridor. Access is good via paved roads with easy access to Interstate 15. Lake Elsinore is located under two miles south of the site.

Land Comparable 2

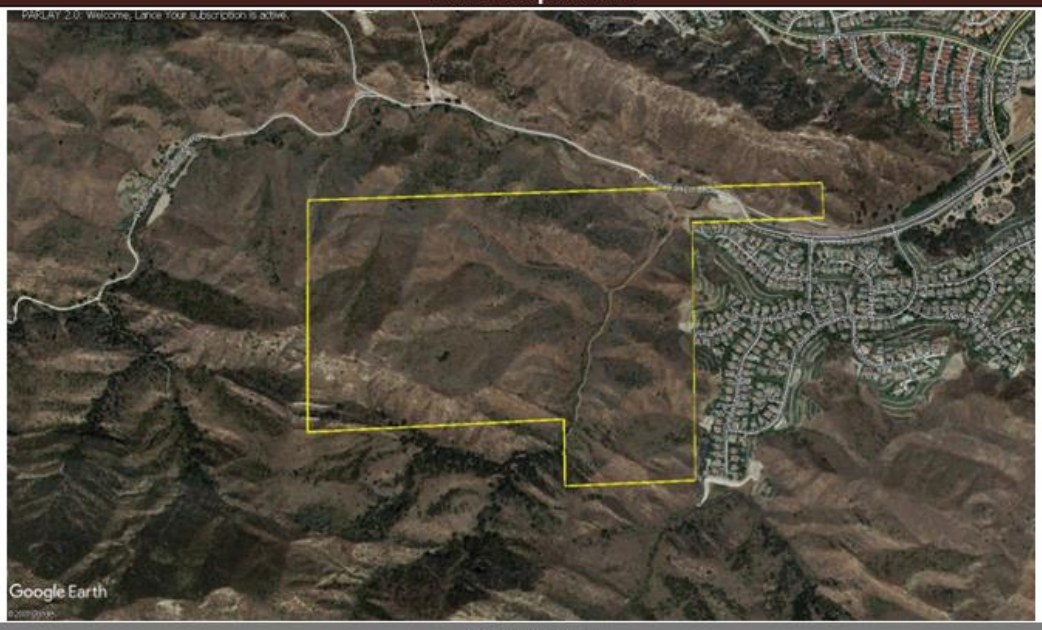
Transaction			
ID	7127	**Date**	12/8/2021
Address	6501 Clay Street	**Price**	$22,200,000
City	Jurupa Valley	**Price per Acre**	$329,475
State	CA	**Financing**	Conventional
Assessor Parcel No	163-400-001, -002, -052	**Property Rights**	Fee Simple
Grantor	IHC Jurupa LLC	**Current Use**	Vacant
Grantee	Forestar (USA) Real	**Legal Description**	Lengthy; retained in TDG

Land			
Acres	67.38	**Topography**	Level to Rolling
Land SF	2,935,073	**Zoning**	R-4
Road Frontage	Clay Street	**Zoning Type**	Medium-Density
Shape	Irregular	**Entitlements At Time of**	Fully Entitled 254 Units
Utilities	Require Extension	**Site Drainage**	Adequate

Sale Comments

This property sold on December 8, 2021 for $22,200,000, or $87,402 per lot. The site was entitled for the development of 254 homes and public space. The density of the development is 3.77 dwelling units per acre. The site has level to rolling topography and good, paved access. The site had previously been purchased in 2018 for $8,950,000 prior to the approval of entitlements.

Land Comparable 3



Transaction			
ID	7373	**Date**	4/30/2018
Address	Pico Canyon Road	**Price**	$10,450,000
City	Stevenson Ranch	**Price per Acre**	$45,336
State	CA	**Financing**	Conventional
Assessor Parcel No	2826-020-023 et al	**Property Rights**	Fee Simple
Grantor	Aidlin General	**Current Use**	Vacant
Grantee	Lennar Homes of	**Legal Description**	Lengthy; retained in TDG

Land			
Acres	230.50	**Topography**	Level to Rolling
Land SF	10,040,580	**Zoning**	LCA22
Road Frontage	Pico Canyon Road	**Zoning Type**	Agriculture
Shape	Irregular	**Entitlements At Time of**	Fully Entitled 102 Units
Utilities	Available but require	**Site Drainage**	Adequate

Sale Comments

This property sold on April 30, 2018 for $10,450,000, or $102,450 per lot. The property was sold to Lennar Homes of California with plans, maps, and engineering already approved. The buyer plans of breaking down the site into residential, open space, and other public uses. 102 dwelling units were approved on 61 acres of this land, bringing the overall density of residential to 1.67 dwelling units per acre. Some of the acreage was donated to the City of Santa Clarita, who will manage the open space areas.

Land Comparable 4

Transaction			
ID	7374	**Date**	2/28/2020
Address	N/O Hasley Canyon Road	**Price**	$36,000,000
City	Castaic	**Price per Acre**	$85,044
State	CA	**Financing**	Conventional
Assessor Parcel No	3247-032-052 et al	**Property Rights**	Fee Simple
Grantor	SFI Los Valles LLC	**Current Use**	Vacant
Grantee	WH Castaic 497 LLC	**Legal Description**	Lengthy; retained in TDG

Land			
Acres	423.31	**Topography**	Rolling to Steep
Land SF	18,439,384	**Zoning**	LCA22
Road Frontage	Hasley Canyon Road	**Zoning Type**	Agriculture
Shape	Irregular	**Entitlements At Time of**	Fully Entitled 497 units
Utilities	Available but require	**Site Drainage**	Adequate

Sale Comments

This property sold on February 28, 2020 to WH Castaic 497 LLC for $36,000,000, or $72,435 per lot. The property was fully entitled at the time of sale for the purposes of a master planned community with 497 dwelling units. The entire site is 423.31 acres, but 189 acres will be set aside for open space. The overall density is 2.12 dwelling units per acre.

Land Comparable 5

Transaction			
ID	2730	**Date**	3/26/2018
Address	Blackwolf Drive	**Price**	$2,400,000
City	Alpine	**Price per Acre**	$13,353
State	CA	**Financing**	Cash
Assessor Parcel No	404-011-08, 402-341-04	**Property Rights**	Fee Simple
Grantor	Viejas Hills Partners, LLC	**Current Use**	Vacant
Grantee	Blackwolf 2 Partners L.P.	**Legal Description**	Lengthy; retained in TDG

Land			
Acres	179.74	**Topography**	Level to Rolling
Land SF	7,829,474	**Zoning**	A70
Road Frontage	Blackwolf Drive/Fazio	**Zoning Type**	Residential
Shape	Flag	**Entitlements At Time of**	Fully Entitled 27 units
Utilities	Available at property	**Site Drainage**	Adequate

Sale Comments

This property sold on March 26, 2018 for $2,400,000 to Blackwolf 2 Partners, L.P. At the time of sale, approvals were already in place for 27 individual units. A total of 140.06 acres were used for open space mitigation, leaving the overall density of the units at 1 dwelling per 0.68 acres. The site is located in the area of Alpine, within San Diego County. Utilities are available at the property boundary, and topography is rolling to steep.

Land Comparable 6

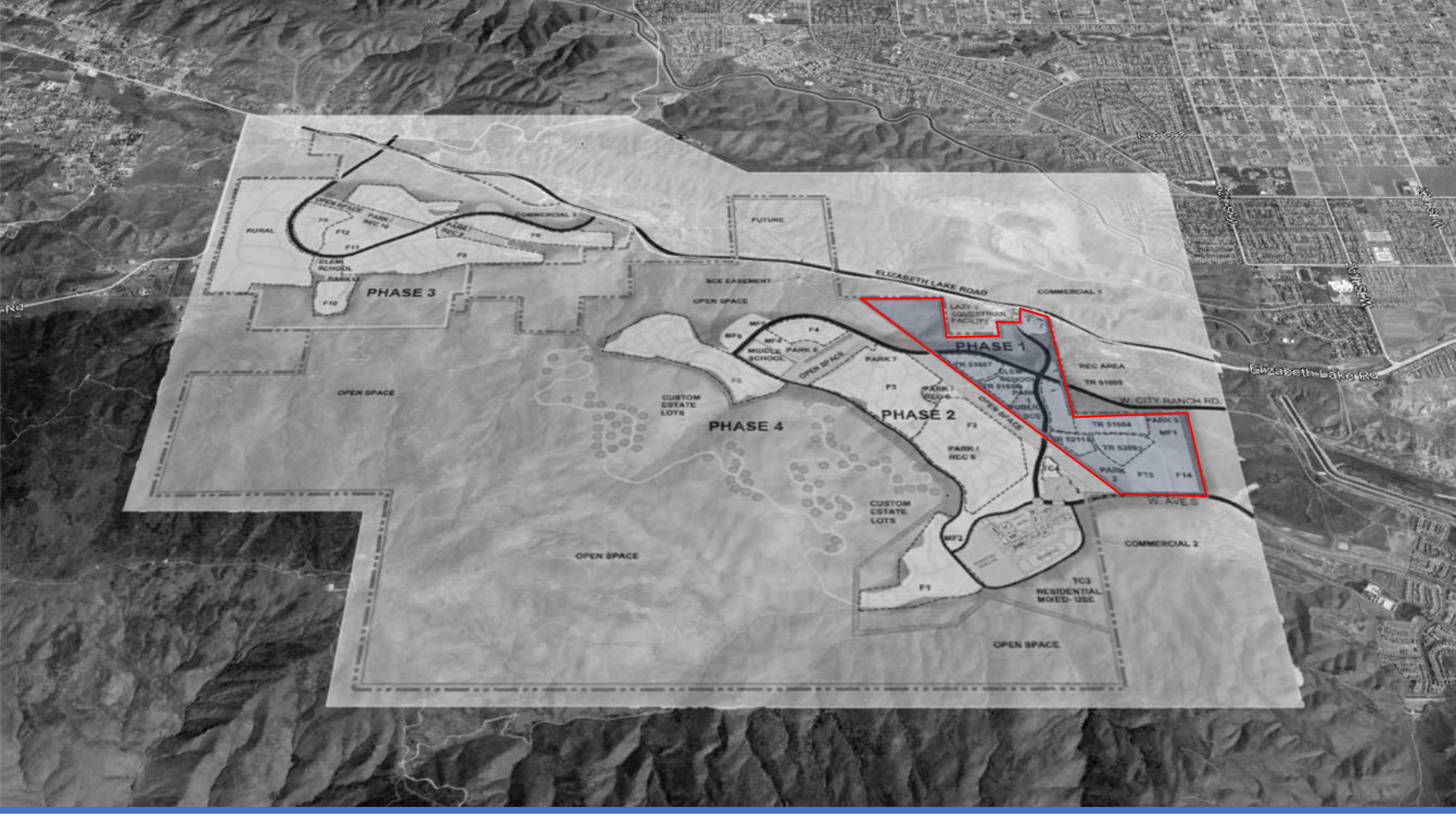
Transaction			
ID	7375	**Date**	8/11/2020
Address	24925 The Old Road	**Price**	$15,000,000
City	Newhall	**Price per Acre**	$83,333
State	CA	**Financing**	Conventional
Assessor Parcel No	2826-023-014 et al	**Property Rights**	Fee Simple
Grantor	Western Pacific Housing-	**Current Use**	Vacant
Grantee	Nuwi-Lyons Canyon LLC	**Legal Description**	Lengthy; retained in TDG

Land			
Acres	180.00	**Topography**	Level to Rolling to Steep
Land SF	7,840,800	**Zoning**	LCA22
Road Frontage	The Old Road	**Zoning Type**	Agriculture
Shape	Irregular	**Entitlements At Time of**	Fully Entitled 182 Units
Utilities	Available but require	**Site Drainage**	Adequate

Sale Comments

This property sold on August 11, 2020 to Nuwi-Lyons Canyon LLC for $15,000,000, or $82,408 per unit. The sale is comprised of 180 gross acres of raw land that was fully entitled for 91 single-family lots and 91 townhomes; however, the buyer planned to re-entitle the property but are still in the planning phase. The property contains no environmental concerns.

ZONDA REPORT



Ritter Ranch Master Planned Community (Phase One)

Assessment of Phase One Market Opportunity
RDR Development Holdings
City of Palmdale, Los Angeles County, CA
August 2021

Zonda

Objective

The objective of this assignment was to assess the market-based opportunity for the residential element in phase one of the Ritter Ranch Master Planned Community in the City of Palmdale, Los Angeles County, California relative to today's current and expected economic and housing market conditions. Zonda (under our previous name Zonda) conducted a full master plan market analysis on this property in April of 2019. This is an update and enhancement of the phase one recommendations from that report reflecting the current lot counts and plan.

Note: This report was completed during the ongoing global health crisis created by the COVID-19 (coronavirus) outbreak, the duration and consequences of which are still largely unknown. Our research and conclusions are based upon the best information available to us at the time of publication.

Contact Information

The following key team members participated on this analysis:

Tim Sullivan, Senior Managing Principal, oversees our Advisory practice. With over three decades of experience, Mr. Sullivan is an expert in residential and mixed use feasibility studies, strategic planning and product development, and regularly conducts market analyses around the United States and internationally.

JT Schwartz, Director, managed the engagement on a day-to-day basis. Mr. Schwartz has over 18 years of experience in the real estate Advisory field, and has experience in Palmdale and Los Angeles County.

Follow-up questions should be directed to Tim Sullivan at 858.381.4381 or tsullivan@Zondallc.com.

Additional support was provided as needed.

Limiting Conditions

RDR Development Holdings is responsible for representations about its development plans, marketing expectations and for disclosure of any significant information that might affect the ultimate realization of the projected results. There will usually be differences between projected and actual results because events and circumstances frequently do not occur as expected, and the differences may be material. We have no responsibility to update our report for events and circumstances occurring after the date of our report. Payment of any and all of our fees and expenses is not in any way contingent upon any factor other than our providing services related to this report.

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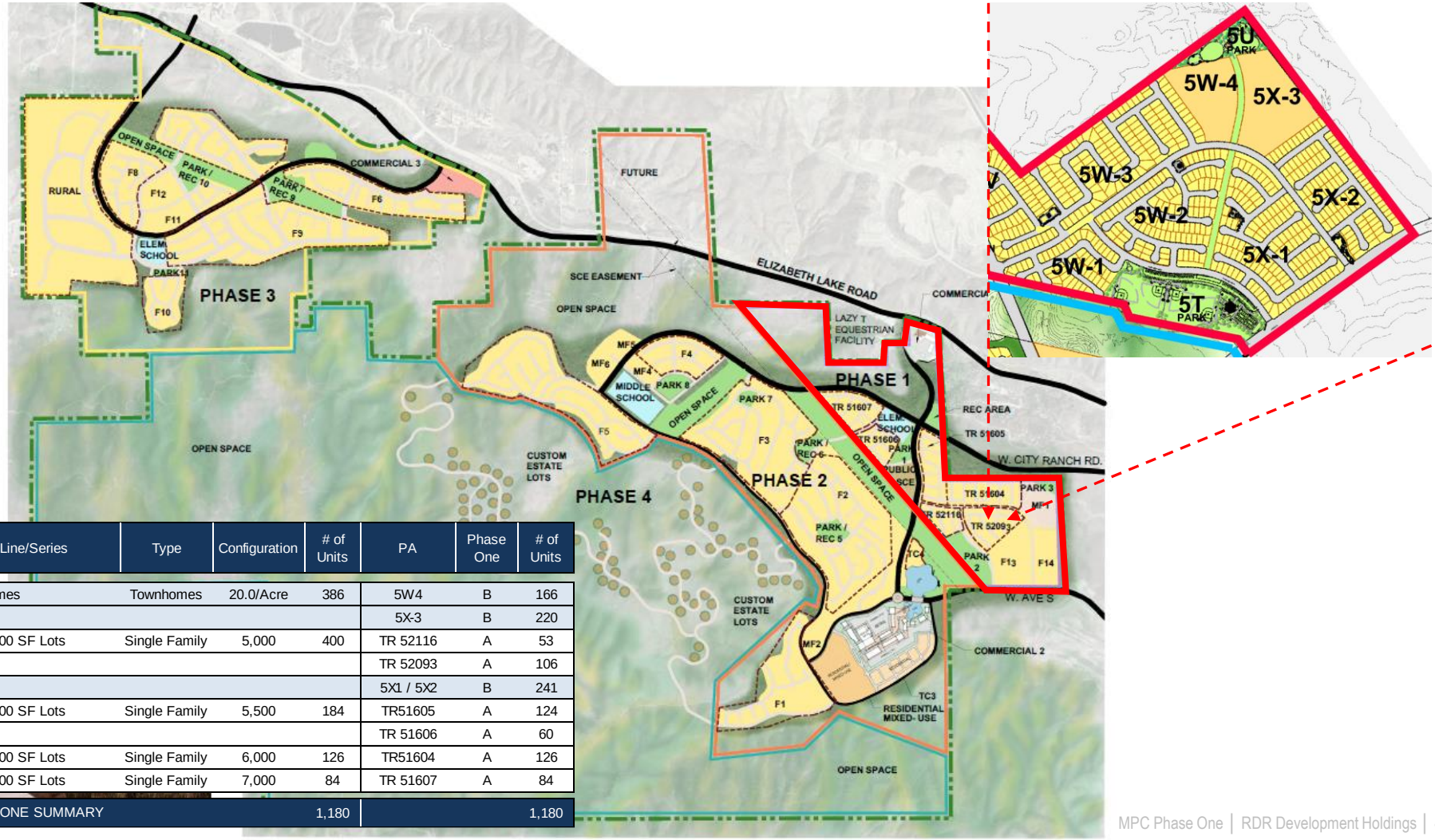
KEY FINDINGS (RITTER RANCH CURRENT LAND USE PLAN)

Summary of Report Recommendations

Zonda

Ritter Ranch will be a full-service master planned community on the western fringe of the City of Palmdale in Los Angeles County, California. It is currently planned for over 6,000 residential units with complementing other uses including commercial space, public schools, village centers, community parks and trails, and vast open space. **The focus of this analysis are the initial 1,180 for-sale residential homes known as Phase One of the master plan (summarized in the table below and highlighted in red on the maps) with the full understanding of the greater community's mixed-use concept and enhanced living environment.** Note modifications to phase one from the initial master plan map are shown on the supplemental map. An innovative master plan model like this will be somewhat pioneering for the City of Palmdale area but it is the logical next step for the City as Ritter Ranch will build upon and improve the quality of life offered by other existing master plans both in Palmdale and in Santa Clarita.



Product Line/Series	Type	Configuration	# of Units	PA	Phase One	# of Units
Townhomes	Townhomes	20.0/Acre	386	5W4	B	166
				5X-3	B	220
SFD 5,000 SF Lots	Single Family	5,000	400	TR 52116	A	53
				TR 52093	A	106
				5X1 / 5X2	B	241
SFD 5,500 SF Lots	Single Family	5,500	184	TR51605	A	124
				TR 51606	A	60
SFD 6,000 SF Lots	Single Family	6,000	126	TR51604	A	126
SFD 7,000 SF Lots	Single Family	7,000	84	TR 51607	A	84
PHASE ONE SUMMARY			1,180			1,180

Zonda

Key Findings

Ritter Ranch Master Planned Community (Phase One)

RDR Development Holdings is evaluating the market opportunity associated with the initial phase one release at "Ritter Ranch," a 767.2 acre, proposed mixed use, master planned community located in Los Angeles County, California, on the western border of the City of Palmdale. Ritter Ranch will provide a complete living environment for all potential homebuyer segments blending residential, commercial and recreational uses in a Palmdale market that is "ready" for such an innovative living option. The Subject site is on the more desirable western portion of the City, tucked amid a beautiful mountain setting that is just west of the Anaverde community. We anticipate that a well planned, new home development would be able to greatly enhance the immediate area. The subject of this analysis are the +/-1,180 for sale residential units currently planned for phase one of the property. The initial release is a mix of lot sizes and product types that can sell concurrently and will capitalize on expediated home price appreciation in more western areas of the County. Product types and lot sizes have been defined by RDR Development Holdings. This analysis provides a representation of what pricing and absorption make sense for the master plan's first product release. After evaluating the competitive market and speaking with our builder and developer clients in the local area, we believe Ritter Ranch continues to offer a very good to even great development opportunity that should be well received in the market. From a new home housing perspective, single family home development in Los Angeles County is particularly rare given the built-out nature of most western areas of the County and exceedingly high land costs which translate into some of the least affordable residential home prices in both California and the United States. Palmdale is an area that provides buyers with notable price relief, however, living choices historically have been rather basic. Ritter Ranch will be able to offer the public an attainably priced home and an exciting place to live. This is further supported by the following:

- Given the site size and current land plan, our product recommendations are based on excellent master plan execution complemented with quality production home builders that have regional and national marketing reach. **Living in Ritter Ranch goes beyond just owning a home but buying into a lifestyle that cannot be found elsewhere in Palmdale. Phase One will be the public's first introduction to this community what will be a source of new home supply for the County for years to come.**

- Zonda's recommended average base price for the first 1,180 homes at Ritter Ranch in today's market is $564,322. **Once estimated premiums and options and upgrades are factored, the average/total sales price is $609,027 equating to $255 per square foot.** Product type by product type pricing and absorption recommendations are as follows (see the greater analysis for detail on each of these inputs):

						BASE PRICE			NET BASE PRICE		$ ASSUMPTIONS		AVERAGE PRICE		
Project/Subdivision	Type	Configuration	# of Units	Est % of Total Units	Average Unit Size	Base Price	$/SF	Price Impacting Incentives	Net Base Price	$/SF	Options	Premiums	Average Price	$/SF	Estimated Sales/Month
Townhomes	Townhomes	20.0/Acre	386	33%	1,800	$465,000	$258	$0	$465,000	$258	$18,600	$4,650	$488,250	$271	4.00
SFD 5,000 SF Lots	Single Family	5,000	400	34%	2,450	$566,250	$231	$0	$566,250	$231	$33,975	$16,988	$617,213	$252	5.00
SFD 5,500 SF Lots	Single Family	5,500	184	16%	2,700	$612,500	$227	$0	$612,500	$227	$36,750	$18,375	$667,625	$247	4.50
SFD 6,000 SF Lots	Single Family	6,000	126	11%	3,100	$675,000	$218	$0	$675,000	$218	$40,500	$20,250	$735,750	$237	4.00
SFD 7,000 SF Lots	Single Family	7,000	84	7%	3,400	$740,000	$218	$0	$740,000	$218	$44,400	$22,200	$806,600	$237	3.00
COMMUNITY SUMMARY			1,180	100%	2,413	$564,322	$237	$0	$564,322	$237	$30,817	$13,887	$609,027	$255	4.3

- **As of August 2021, our recommended prices continue to position Phase One as the price leader in the Antelope Valley (Palmdale and Lancaster)** which is logical given: 1) the innovative mixed-use setting; 2) brand new construction (currently very limited); 3) proposed amenity offering (rare in Palmdale); 4) natural mountain setting (extremely rare); and 5) west Palmdale location (preferred location). Ritter Ranch will be a next step living option for a City that is truly "ready" for a new full-service master plan. Prices for a home at the Subject will be at the top of the local market, a clear step above what is currently offered but within established values for better homes in the area. From a regional perspective there remains a large price disparity between the Santa Clarita Valley and in the Antelope Valley (base price per square foot at $344 versus $215) and Ritter Ranch, with all its positive attributes, will strategically close that gap while offering attainably priced housing for the greater County.

- Zonda estimates hypothetical community homes sales for Phase One at Ritter Ranch starting with 138 sales in Year One and up to 261 units per year by Year Three. **By Year Three, Phase 1B could come online with replacement product in subsequent phases entering the market in Year Four. Zonda remains comfortable with targeting annual sales in the 300 to 400 unit or more range if the master plan were to offer both a conventional and active adult program (the active adult segment is not part of Phase One which translates to lower annual sales compared to our initial analysis in 2019).** Note: this sell out schedule assumes consistent land releases and uninterrupted sales efforts. Actual sales releases and infrastructure timing will impact this sell/build out schedule and the execution of community design must be timely and excellent. Further, this sell out schedule is based on master planning principles and what is marketable today and what will be marketable as the community matures. Zonda does not envision releasing townhomes until the community gains market footing and is "ready" to offer attached homes which are currently nonexistent in the Antelope Valley. The schedule below shows the townhomes entering the market in mid Year Three and selling into Year Eight while other replacement conventional homes are selling in other phases.

HYPOTHETICAL COMMUNITY SELL OUT										Phase 1B Begins	Plan For Phase 2 Here				
Product Line/Series	Type	Configuration	# of Units	PA	Phase One	# of Units	Monthly Pace	Year One	Year Two	Year Three	Year Four	Year Five	Year Six	Year Seven	Year Eight
Townhomes	Townhomes	20.0/Acre	386	5W4	B	166	4.0			24	48	48	46		
Assumes Second Distinct Townhome Series:				5X-3	B	220					24	48	48	48	52
SFD 5,000 SF Lots	Single Family	5,000	400	TR 52116	A	53	5.0	53							
				TR 52093	A	106		7	60	39					
Assumes Two Communities Selling Concurrently:				5X1 / 5X2	B	241				60	120	61			
SFD 5,500 SF Lots	Single Family	5,500	184	TR51605	A	124	4.5	54	54	16					
				TR 51606	A	60				38	22				
SFD 6,000 SF Lots	Single Family	6,000	126	TR51604	A	126	4.0	24	48	48	6				
SFD 7,000 SF Lots	Single Family	7,000	84	TR 51607	A	84	3.0		36	36	12				
COMMUNITY SUMMARY			1,180			1,180	4.3	138	198	261	232	157	94	48	52

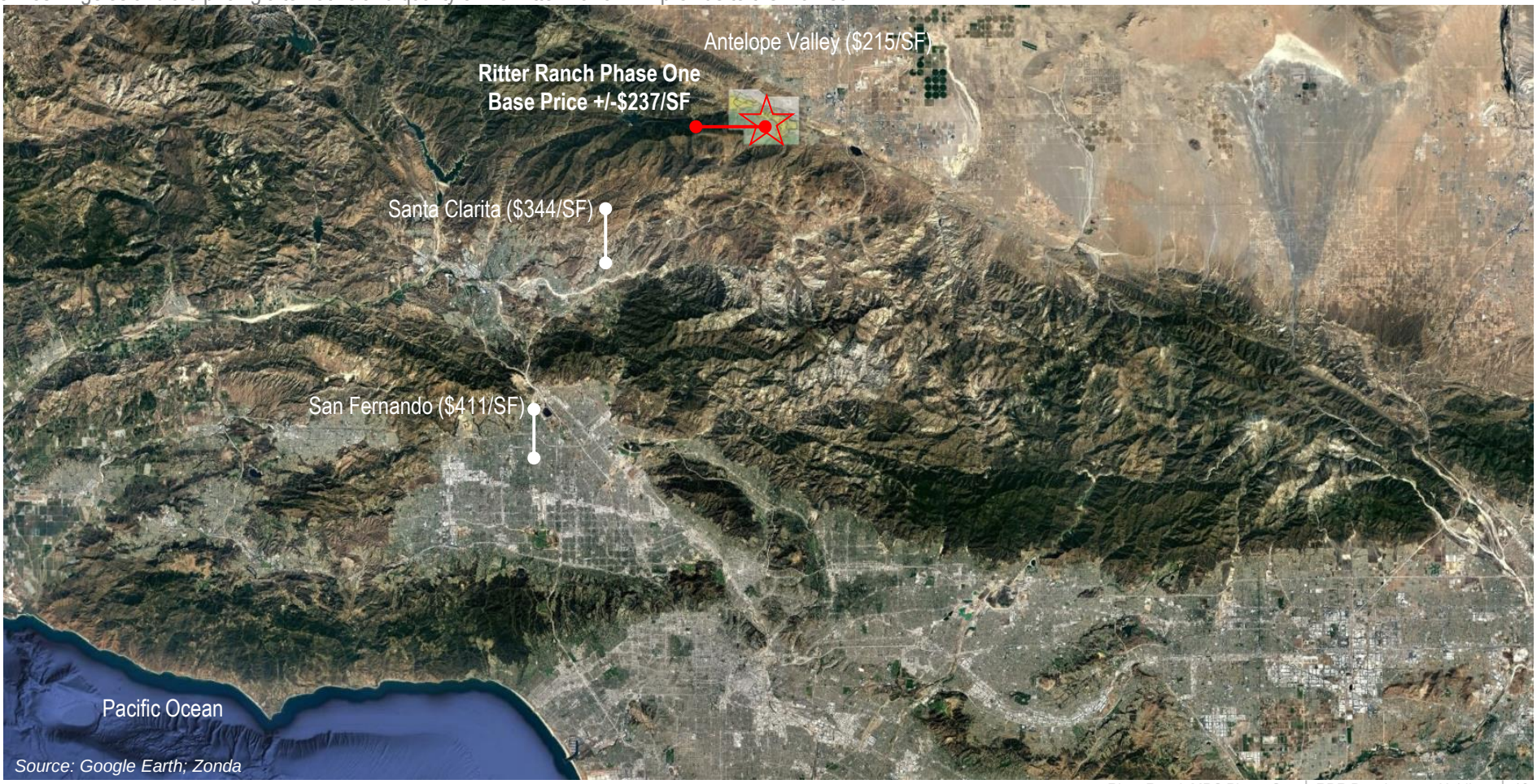
- **Based on our recommended base prices and hypothetical premiums, our static land residual reflects an average finished lot price of $183,679 (+/-32% lot-to-home price ratio).** Lot prices range from +/-$137,407 for a Townhome to +/-$237,217 for a SFD 7,000 square foot lot. Note: we used builder profit of 8% for the detached series and 12% for the attached series and hard costs that range $95 to $105 per square foot. While home prices have increased notably the past two years, so have hard costs which mitigates some of the lot price gains. Variations to these inputs will impact the residual amount. This model does not account for City of Palmdale specific fees.

						NET BASE PRICE		$ Assumptions	Base Plus Premiums		RESIDUAL INPUTS		LAND RESIDUAL OUTPUT	
Project/Subdivision	Type	Configuration	# of Units	Est % of Total Units	Average Unit Size	Net Base Price	$/SF	Premiums	Base + Premiums	$/SF	Builder Profit	Hard Costs	Lot Price	Lot to Home Price (plus Prem's)
Townhomes	Townhomes	20.0/Acre	386	33%	1,800	$465,000	$258	$4,650	$469,650	$261	12%	$105	$137,407	29.3%
SFD 5,000 SF Lots	Single Family	5,000	400	34%	2,450	$566,250	$231	$16,988	$583,238	$238	8%	$95	$195,930	33.6%
SFD 5,500 SF Lots	Single Family	5,500	184	16%	2,700	$612,500	$227	$18,375	$630,875	$234	8%	$95	$207,193	32.8%
SFD 6,000 SF Lots	Single Family	6,000	126	11%	3,100	$675,000	$218	$20,250	$695,250	$224	8%	$95	$216,509	31.1%
SFD 7,000 SF Lots	Single Family	7,000	84	7%	3,400	$740,000	$218	$22,200	$762,200	$224	8%	$95	$237,217	31.1%
COMMUNITY SUMMARY			1,180	100%	2,413	$564,322	$237	$13,887	$578,209	$242	9%	$98	$183,679	31.6%

Pricing & Absorption Recommendations

Ritter Ranch Master Planned Community (Phase One)

Ritter Ranch is an assemblage of +/-767.2 acres in west Palmdale. The aerial map below provides perspective on the Subject Property's location within the Antelope Valley (Palmdale and Lancaster) and greater Los Angeles County. While the site is technically on the fringe of the City, Ritter Ranch is in the preferred location within the immediate area as Palmdale is considered more attractive than Lancaster and west Palmdale is considered more attractive than east Palmdale. Phase One of the development has some infrastructure in place including roads and utilities. For-sale new home supply in Los Angeles County is very low compared to employment growth in the County which has subsequently pushed home prices (and commute times) near the top of California and the greater Country. **Ritter Ranch will be a new master planned community that will add much needed new home options in a location that is already in the path of development, were homebuyers have historically gone for value and within reasonable commute times to employment in both the Antelope Valley and Santa Clarita Valley.** Note the new home base price per square foot values in "closer in" areas of Los Angeles and the pricing alternative and quality of life Ritter Ranch will provide to the market.



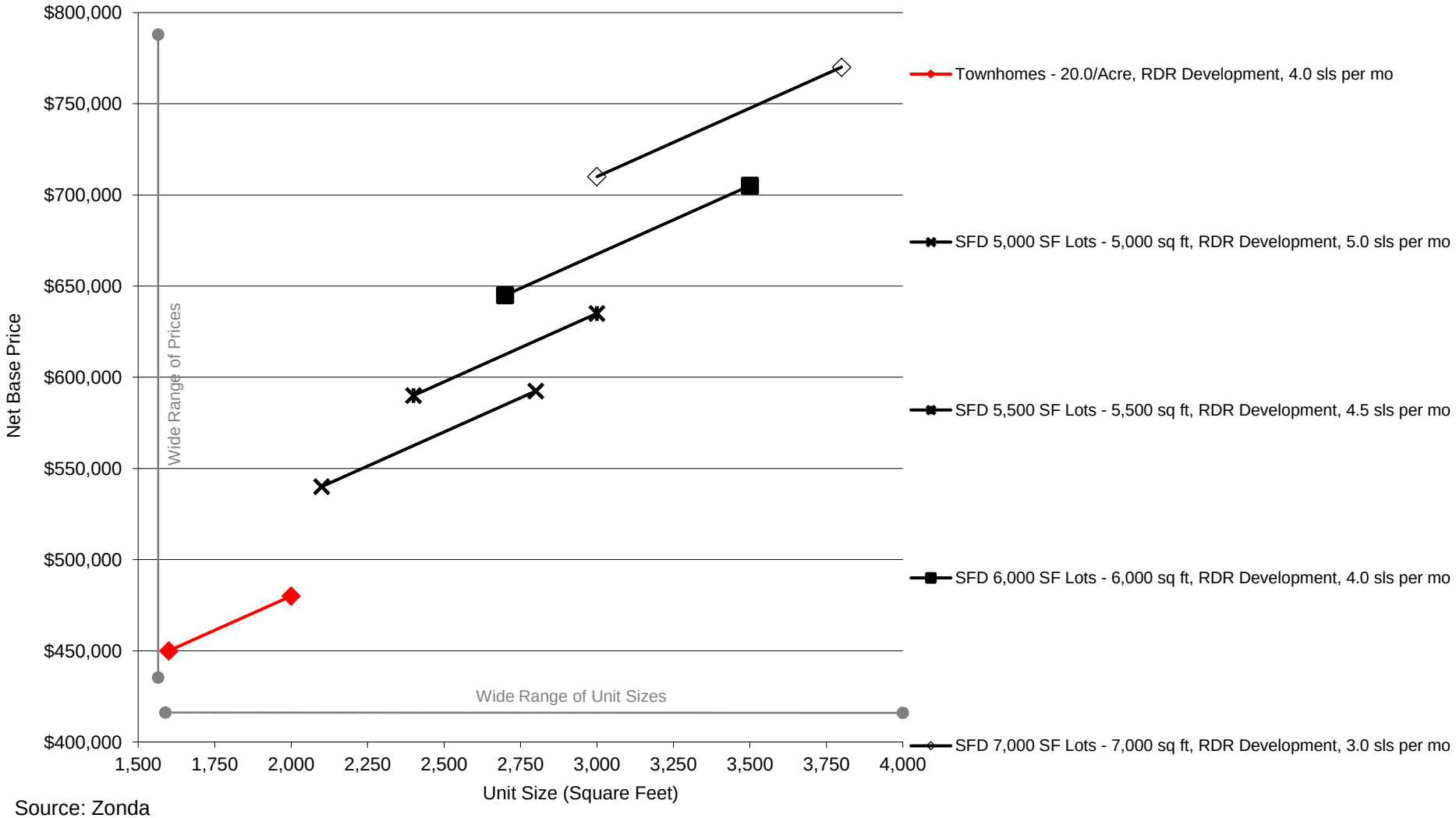
Source: Google Earth; Zonda

For-Sale Product for Phase One with Our Recommended Pricing Offers a Rather Wide Array of Living Options Consistent With the Overall Community Concept and Vision. We support Ritter Ranch development opportunity given the overall innovative master planned community vision, the site's unique and beautiful physical attributes and the goal to offer attainably priced lot/home volume in a County with a dire affordability issue. A residential community is the logical use for this land, and we have no real concerns with its overall marketability. Large-scale production builder programs are currently limited in the Palmdale area market but historically this has been a very active market and an opportunity like Ritter Ranch could bring builders back to the area. Overall, the product plan appears consistent with demand in the local and regional market and the planned residential product series will create a cohesive, balanced master planned community.

The table below summarizes Zonda's recommended base prices, options, premiums, average price and absorption potential for Phase One's 1,180 for-sale units at Ritter Ranch. Recommended net base prices as of August average $564,322 and our total/average sales prices are $609,027 for a 2,413 square foot home. The total/average price today includes +/-$30,817 (5.5%) of the base price for options and upgrades with 4% estimated for the Townhomes and 6% for the single-family series. These percentages can vary widely depending on the ultimate builder of the product line. There will also be an opportunity to capture lot premiums at the Subject for an assortment of conditions such as: subdivision location (many parcels will be elevated and gated), territorial views, lot size, cul-de-sac, location etc. Our estimated average premium for the community is 2.5% of the base price, or +/-$13,887 per home (1.0% and 3.0% depending on the series). These premium estimates may end up being conservative, however, at this stage of planning we side with the conservative approach until subdivisions are more defined and there is an opportunity to "walk" each lot for more refined premium opportunities. Note: our recommended prices heavily consider the impacts of the Subject's estimated tax rate of 2.0% and homeowners association dues at $150 per month. These monthly assessments will be at the top of the current Palmdale area market and changes to them may impact our recommended prices.

						BASE PRICE			NET BASE PRICE		$ ASSUMPTIONS		AVERAGE PRICE		
Project/Subdivision	Type	Configuration	# of Units	Est % of Total Units	Average Unit Size	Base Price	$/SF	Price Impacting Incentives	Net Base Price	$/SF	Options	Premiums	Average Price	$/SF	Estimated Sales/Month
Townhomes	Townhomes	20.0/Acre	386	33%	1,800	$465,000	$258	$0	$465,000	$258	$18,600	$4,650	$488,250	$271	4.00
SFD 5,000 SF Lots	Single Family	5,000	400	34%	2,450	$566,250	$231	$0	$566,250	$231	$33,975	$16,988	$617,213	$252	5.00
SFD 5,500 SF Lots	Single Family	5,500	184	16%	2,700	$612,500	$227	$0	$612,500	$227	$36,750	$18,375	$667,625	$247	4.50
SFD 6,000 SF Lots	Single Family	6,000	126	11%	3,100	$675,000	$218	$0	$675,000	$218	$40,500	$20,250	$735,750	$237	4.00
SFD 7,000 SF Lots	Single Family	7,000	84	7%	3,400	$740,000	$218	$0	$740,000	$218	$44,400	$22,200	$806,600	$237	3.00
COMMUNITY SUMMARY			1,180	100%	2,413	$564,322	$237	$0	$564,322	$237	$30,817	$13,887	$609,027	$255	4.3

The graph below illustrates the pricing segmentation for the proposed product program at Ritter Ranch. Base pricing ranges between approximately $450,000 and $770,000, which encompasses a large, and very underserved portion of the new home demand in the County and is generally consistent with what is expected in the City of Palmdale for new product. With this proposed program Ritter Ranch will offer a wide variety of product and price points to attract a broad range of buyer profiles.



Source: Zonda

Zonda

The table below lists the recommended base price, total price, and absorption estimate for each Phase One product series. The lot sizes and unit counts per parcel are as per RDR Development Holdings.

1. Options and Upgrades: 4% and 6% of the base price depending on the series. This ranges from an average of $18,600 for the townhomes to $44,400 for the 7,000 SF Lots;
2. Premiums: 1.0% attached homes and 3.0% detached of the base price for conditions such as subdivision location (many parcels will be elevated and gated), territorial views, larger lots, cul-de-sac lots, privacy/end units and proximity to amenities. These estimates may end up being conservative and we recommend revisiting this revenue input as progress continues. The most accurate way to determine the premium opportunity is to "walk" each lot but at this stage of planning that is premature;
3. $150 per month for HOA dues (same estimates from our previous analysis). Note that it is likely the attached homes will have a higher monthly rate;
4. A total tax rate of 2.0%. This assumed rate is on the higher side for the City of Palmdale but there are communities in the market at a similar rate (Joshua Ranch and Seasons at Avenue R). Variations to the tax rate may impact our recommended prices. See the hypothetical tax rate sensitivity table following this floorplan breakdown.

COMMUNITY SPECIFICS				FLOORPLANS		RECOMMENDATIONS														
Subject Property Name						Mo		Base	Incentives		Net Base	Net Base	Assumptions			Total	Payment Assumptions			80.0%
Location						Sales	Base	Price/	Options /	Price	Price ($	Price/	Options /	Estimated	Total	Price/	Monthly	Base	Addl Tax	3.2%
Product Details		Sales Summary		Mix	Size SF	Pace	Price	SF	Upgrades	Reduction	Impacting)	SF	Upgrades	Premiums	Price	SF	HOA	Tax Rate	Assess.	Mo. Pmt.
Townhomes		**RDR Development**		193	1,600	4.0	$450,000	$281	$0	$0	$450,000	$281	$18,000	$4,500	$472,500	$295	$150	1.10%	0.90%	$2,572
Palmdale		**Ritter Ranch**		193	2,000		$480,000	$240	$0	$0	$480,000	$240	$19,200	$4,800	$504,000	$252	$150	1.10%	0.90%	$2,734
Product:	Townhomes	Total Units:	386																	
Configuration:	20.0/Acre	Units Sold:	0																	
Lot Dimensions:	ATT	3 Months Sold:	0																	
Planning Area:		Units Remaining:	386																	
5W4	166	% Remaining:	100%																	
5X-3	220																			
		Summary Statistics:			1,800	4.0	$465,000	$258	$0	$0	$465,000	$258	$18,600	$4,650	$488,250	$271	$150	1.10%	0.90%	$2,653
SFD 5,000 SF Lots		**RDR Development**		200	2,100	5.0	$540,000	$257	$0	$0	$540,000	$257	$32,400	$16,200	$588,600	$280	$150	1.10%	0.90%	$3,167
Palmdale		**Ritter Ranch**		200	2,800		$592,500	$212	$0	$0	$592,500	$212	$35,550	$17,775	$645,825	$231	$150	1.10%	0.90%	$3,461
Product:	Single Family	Total Units:	400																	
Configuration:	5,000	Units Sold:	0																	
Lot Dimensions:	-	3 Months Sold:	0																	
Planning Area:		Units Remaining:	400																	
TR 52116	53	% Remaining:	100%																	
TR 52093	106																			
5X1 / 5X2	241																			
		Summary Statistics:			2,450	5.0	$566,250	$231	$0	$0	$566,250	$231	$33,975	$16,988	$617,213	$252	$150	1.10%	0.90%	$3,314

FLOORPLAN HIGH AND LOW DETAIL (PAGE TWO)

Pricing & Absorption Recommendations

Zonda

COMMUNITY SPECIFICS				FLOORPLANS		RECOMMENDATIONS														
Subject Property Name						Mo		Base	Incentives		Net Base	Net Base	Assumptions			Total	Payment Assumptions			80.0%
Location					Size	Sales	Base	Price/	Options /	Price	Price ($	Price/	Options /	Estimated	Total	Price/	Monthly	Base	Addl Tax	3.2%
Product Details		Sales Summary		Mix	SF	Pace	Price	SF	Upgrades	Reduction	Impacting)	SF	Upgrades	Premiums	Price	SF	HOA	Tax Rate	Assess.	Mo. Pmt.
SFD 5,500 SF Lots		**RDR Development**		92	2,400	4.5	$590,000	$246	$0	$0	$590,000	$246	$35,400	$17,700	$643,100	$268	$150	1.10%	0.90%	$3,447
Palmdale		**Ritter Ranch**		92	3,000		$635,000	$212	$0	$0	$635,000	$212	$38,100	$19,050	$692,150	$231	$150	1.10%	0.90%	$3,698
Product:	Single Family	Total Units:	184																	
Configuration:	5,500	Units Sold:	0																	
Lot Dimensions:	-	3 Months Sold:	0																	
Planning Area:		Units Remaining:	184																	
TR51605	124	% Remaining:	100%																	
TR 51606	60																			
		Summary Statistics:			2,700	4.5	$612,500	$227	$0	$0	$612,500	$227	$36,750	$18,375	$667,625	$247	$150	1.10%	0.90%	$3,573
SFD 6,000 SF Lots		**RDR Development**		63	2,700	4.0	$645,000	$239	$0	$0	$645,000	$239	$38,700	$19,350	$703,050	$260	$150	1.10%	0.90%	$3,754
Palmdale		**Ritter Ranch**		63	3,500		$705,000	$201	$0	$0	$705,000	$201	$42,300	$21,150	$768,450	$220	$150	1.10%	0.90%	$4,089
Product:	Single Family	Total Units:	126																	
Configuration:	6,000	Units Sold:	0																	
Lot Dimensions:	-	3 Months Sold:	0																	
Planning Area:		Units Remaining:	126																	
TR51604	126	% Remaining:	100%																	
		Summary Statistics:			3,100	4.0	$675,000	$218	$0	$0	$675,000	$218	$40,500	$20,250	$735,750	$237	$150	1.10%	0.90%	$3,922
SFD 7,000 SF Lots		**RDR Development**		42	3,000	3.0	$710,000	$237	$0	$0	$710,000	$237	$42,600	$21,300	$773,900	$258	$150	1.10%	0.90%	$4,117
Palmdale		**Ritter Ranch**		42	3,800		$770,000	$203	$0	$0	$770,000	$203	$46,200	$23,100	$839,300	$221	$150	1.10%	0.90%	$4,453
Product:	Single Family	Total Units:	84																	
Configuration:	7,000	Units Sold:	0																	
Lot Dimensions:	-	3 Months Sold:	0																	
Planning Area:		Units Remaining:	84																	
TR 51607	84	% Remaining:	100%																	
		Summary Statistics:			3,400	3.0	$740,000	$218	$0	$0	$740,000	$218	$44,400	$22,200	$806,600	$237	$150	1.10%	0.90%	$4,285

SUBJECT PROPERTY RECOMMENDATIONS BASED ON VARIOUS TAX RATES

Pricing & Absorption Recommendations

Zonda

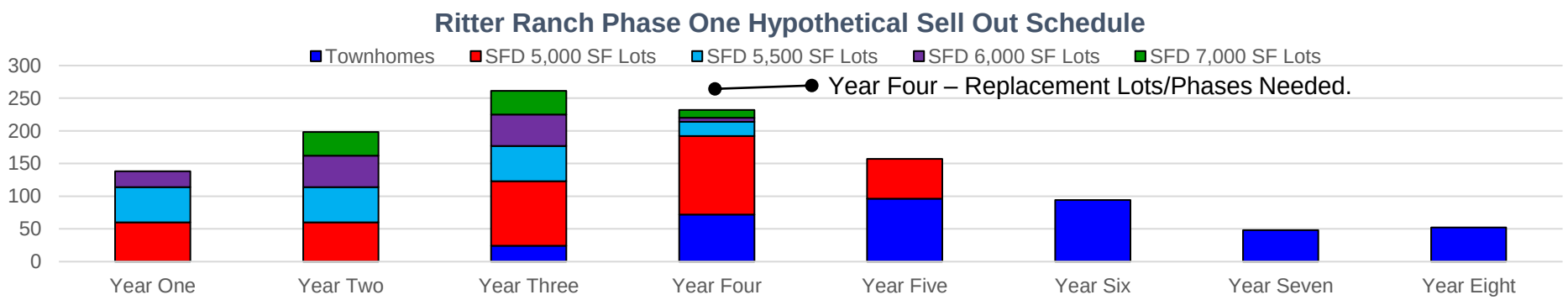
The table below shows our recommended prices for the Subject based on various tax rates. We have assumed that the Subject Property will have a 2.0% total tax rate as per our initial analysis. We understand that this is only an estimate at this time and will adjust as planning moves forward. Tax rates influence achievable home values based on the impact on monthly payments and the cost of future tax payments. Changes in the tax rate will require adjustments either up or down in home prices. The table below shows how our recommended home prices would be adjusted for various rate changes. Each scenario results in the same total monthly payment (mortgage + HOA + taxes). Note that builders typically do not count on 100% of this pricing disparity and often assume from 70% to 80% of the difference.

COMMUNITY SPECIFICS							
Subject Property Name **Location** Product Details		Sales Summary	Mix	Meyers Total Price 2.00% Tax Rate	Meyers Total Price 1.25% Tax Rate	Meyers Total Price 1.50% Tax Rate	Meyers Total Price 1.75% Tax Rate	Mo. Pmt. Without PMI
Townhomes		**RDR Development**	193	$472,500	$538,105	$514,302	$492,515	$2,572
Palmdale		**Ritter Ranch**	193	$504,000	$573,978	$548,588	$525,350	$2,734
Product:	Townhomes	Total Units: 386						
Configuration:	20.0/Acre							
		Summary Statistics:		$488,250	$556,041	$531,445	$508,933	$2,653
SFD 5,000 SF Lots		**RDR Development**	200	$588,600	$670,325	$640,673	$613,534	$3,167
Palmdale		**Ritter Ranch**	200	$645,825	$735,495	$702,961	$673,183	$3,461
Product:	Single Family	Total Units: 400						
Configuration:	5,000							
		Summary Statistics:		$617,213	$702,910	$671,817	$643,358	$3,314
SFD 5,500 SF Lots		**RDR Development**	92	$643,100	$732,392	$699,995	$670,342	$3,447
Palmdale		**Ritter Ranch**	92	$692,150	$788,252	$753,384	$721,470	$3,698
Product:	Single Family	Total Units: 184						
Configuration:	5,500							
		Summary Statistics:		$667,625	$760,322	$726,689	$695,906	$3,573
SFD 6,000 SF Lots		**RDR Development**	63	$703,050	$800,665	$765,248	$732,832	$3,754
Palmdale		**Ritter Ranch**	63	$768,450	$875,146	$836,434	$801,002	$4,089
Product:	Single Family	Total Units: 126						
Configuration:	6,000							
		Summary Statistics:		$735,750	$837,906	$800,841	$766,917	$3,922
SFD 7,000 SF Lots		**RDR Development**	42	$773,900	$881,353	$842,366	$806,683	$4,117
Palmdale		**Ritter Ranch**	42	$839,300	$955,833	$913,552	$874,853	$4,453
Product:	Single Family	Total Units: 84						
Configuration:	7,000							
		Summary Statistics:		$806,600	$918,593	$877,959	$840,768	$4,285

Zonda

Zonda estimates hypothetical community homes sales for Phase One at Ritter Ranch starting with 138 sales in Year One and up to 261 units per year by Year Three. **By Year Three, Phase 1B could come online with replacement product in subsequent phases entering the market in Year Four. Zonda remains comfortable with targeting annual sales in the 300 to 400 unit or more range if the master plan were to offer both a conventional and active adult program (the active adult segment is not part of Phase One which translates to lower annual sales compared to our initial analysis in 2019).** Note: this sell out schedule assumes consistent land releases and uninterrupted sales efforts. Actual sales releases and infrastructure timing will impact this sell/build out schedule and the execution of community design must be timely and excellent. Further, this sell out schedule is based on master planning principles and what is marketable today and what will be marketable as the community matures. Zonda does not envision releasing townhomes until the community gains market footing and is "ready" to offer attached homes which are currently nonexistent in the Antelope Valley. The schedule below shows the townhomes entering the market in mid Year Three and selling into Year Eight while other replacement conventional homes are selling in other phases.

HYPOTHETICAL COMMUNITY SELL OUT										Phase 1B Begins	Plan For Phase 2 Here				
Product Line/Series	Type	Configuration	# of Units	PA	Phase One	# of Units	Monthly Pace	Year One	Year Two	Year Three	Year Four	Year Five	Year Six	Year Seven	Year Eight
Townhomes	Townhomes	20.0/Acre	386	5W4	B	166	4.0			24	48	48	46		
Assumes Second Distinct Townhome Series:				5X-3	B	220					24	48	48	48	52
SFD 5,000 SF Lots	Single Family	5,000	400	TR 52116	A	53	5.0	53							
				TR 52093	A	106		7	60	39					
Assumes Two Communities Selling Concurrently:				5X1 / 5X2	B	241				60	120	61			
SFD 5,500 SF Lots	Single Family	5,500	184	TR51605	A	124	4.5	54	54	16					
				TR 51606	A	60				38	22				
SFD 6,000 SF Lots	Single Family	6,000	126	TR51604	A	126	4.0	24	48	48	6				
SFD 7,000 SF Lots	Single Family	7,000	84	TR 51607	A	84	3.0		36	36	12				
COMMUNITY SUMMARY			1,180			1,180	4.3	138	198	261	232	157	94	48	52



HYPOTHETICAL FINISHED LOT PRICES

Pricing & Absorption Recommendations

Zonda

Based on our recommended base prices and hypothetical premiums, our static land residual reflects an average finished lot price of $183,679 (+/-32% lot-to-home price ratio). Lot prices range from +/-$137,407 for a Townhome to +/-$237,217 for a SFD 7,000 square foot lot. Note: we used builder profit of 8% for the detached series and 12% for the attached series and hard costs that range $95 to $105 per square foot. While home prices have increased notably the past two years, so have hard costs which mitigates some of the lot price gains. Variations to these inputs will impact the residual amount. This model does not account for City of Palmdale specific fees.

						NET BASE PRICE		$ Assumptions	Base Plus Premiums		RESIDUAL INPUTS		LAND RESIDUAL OUTPUT	
Project/Subdivision	Type	Configuration	# of Units	Est % of Total Units	Average Unit Size	Net Base Price	$/SF	Premiums	Base + Premiums	$/SF	Builder Profit	Hard Costs	Lot Price	Lot to Home Price (plus Prem's)
Townhomes	Townhomes	20.0/Acre	386	33%	1,800	$465,000	$258	$4,650	$469,650	$261	12%	$105	$137,407	29.3%
SFD 5,000 SF Lots	Single Family	5,000	400	34%	2,450	$566,250	$231	$16,988	$583,238	$238	8%	$95	$195,930	33.6%
SFD 5,500 SF Lots	Single Family	5,500	184	16%	2,700	$612,500	$227	$18,375	$630,875	$234	8%	$95	$207,193	32.8%
SFD 6,000 SF Lots	Single Family	6,000	126	11%	3,100	$675,000	$218	$20,250	$695,250	$224	8%	$95	$216,509	31.1%
SFD 7,000 SF Lots	Single Family	7,000	84	7%	3,400	$740,000	$218	$22,200	$762,200	$224	8%	$95	$237,217	31.1%
COMMUNITY SUMMARY			1,180	100%	2,413	$564,322	$237	$13,887	$578,209	$242	9%	$98	$183,679	31.6%

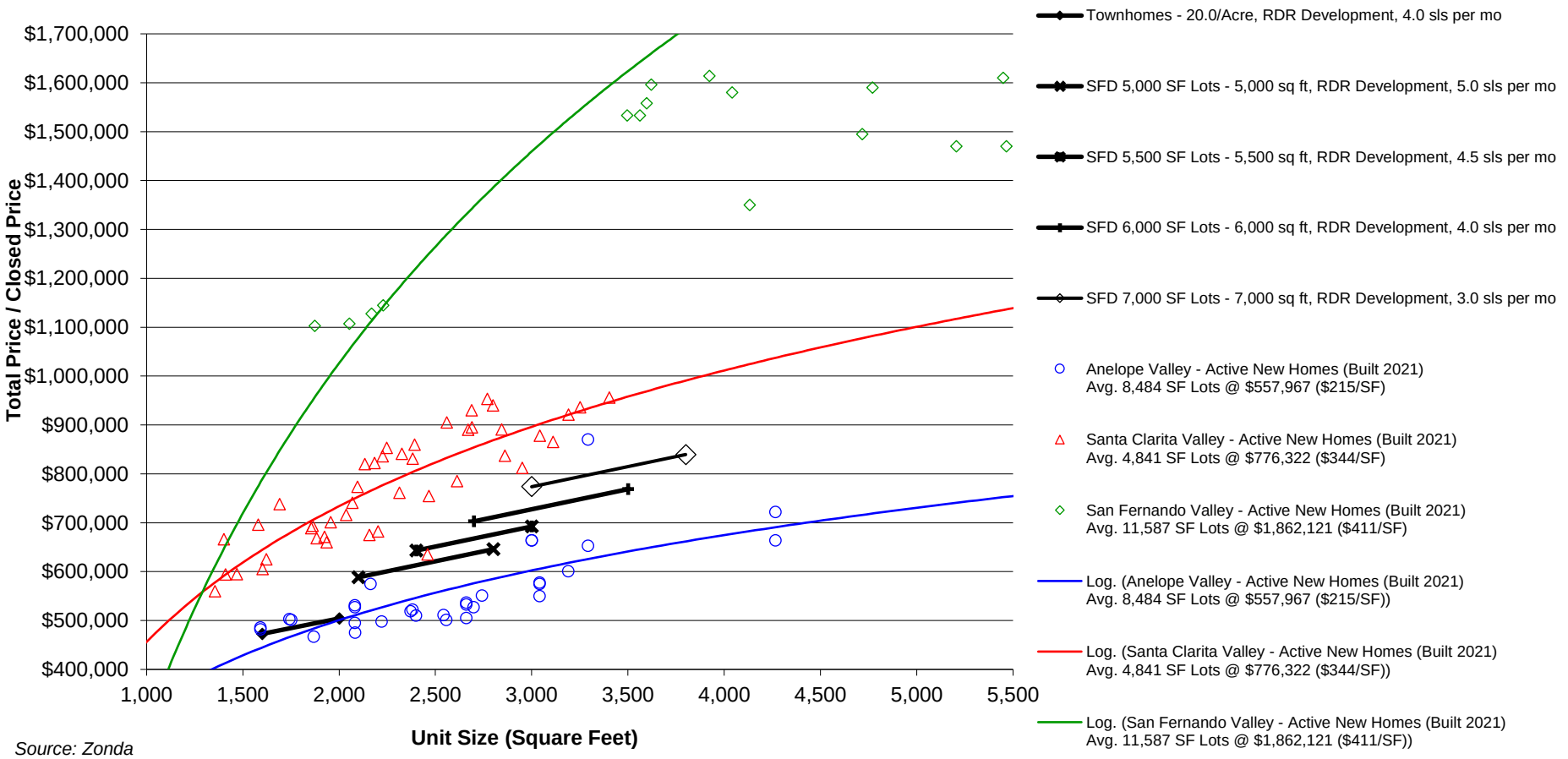
Ritter Ranch Phase One Hypothetical Lot Prices (Static Land Residual)

Zonda

Competitive Market Assessment

Ritter Ranch Master Planned Community (Phase One)

Our recommended prices position Phase One of the Ritter Ranch master planned community as the price leader in the Antelope Valley (Palmdale and Lancaster) which is logical given: 1) the innovative mixed-use setting (currently nonexistent); 2) brand new construction (increasing but still rather limited and basic); 3) proposed amenity offering (rare in Palmdale); 4) natural mountain setting (extremely rare); and 5) west Palmdale location (preferred location). Ritter Ranch will be a next step living option for a City that is truly "ready" for a full-service master plan. Prices for a home at the Subject will be at the top of the local market, a clear step above, but not a step away from current residential options. From a regional perspective there remains a large price disparity between the Santa Clarita Valley and in the Antelope Valley (currently in the high $700,000s versus the mid $500,000s) and Ritter Ranch, with all its positive attributes, will strategically close that gap while offering attainably priced housing for the greater County. The visual below provides a quick snapshot of the overall value opportunity. The following slides detail our recommended prices versus various other housing choices.

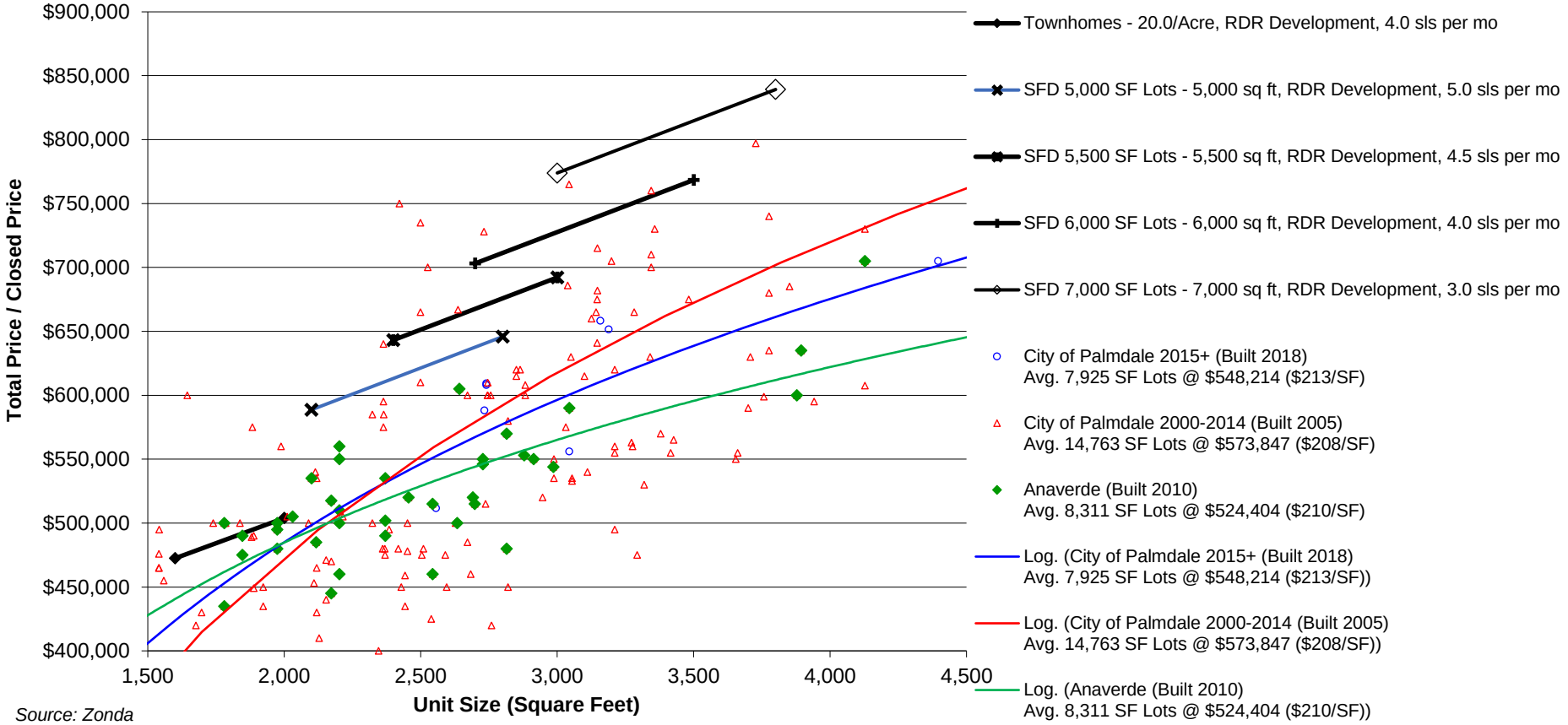


Source: Zonda

AREA NEW HOME CLOSINGS (CITY OF PALMDALE AREA)

Competitive Market Assessment

For this Phase One analysis, we compared newer home closings (2000 to 2014 and 2015+) within the City of Palmdale area over the past three months versus the recommended total prices for Ritter Ranch's initial release (base plus options and upgrades plus premiums). We have also overlaid home closings in the nearby Avaverde master plan, which will restart and add new home supply to the market. **From an absolute price perspective, our recommended price points are at the very top of the local market but well within established values for the area.** The Subject's Townhomes are close to a tradeoff with the single-family resales of the same size which makes sense given Ritter Ranch homes will be new construction within an amenitized master planned community. Some homebuyers will choose low maintenance, attached living in the Subject versus a stale resale single family home. Note there are no newer attached communities in Palmdale to provide any real insight to the overall positioning. Our recommended prices for the single family detached series are at the top of the market. Upon first review there may be an opportunity to push these prices upward even further, however, consider 1) the Subject will have a higher tax rate than most of the resale homes which impacts the monthly payment and affordability; 2) the lot sizes at the Subject will be on the smaller end compared to the resale homes; and 3) Ritter Ranch will be offering several different series at the same time our recommended prices must also balance absorption targets.

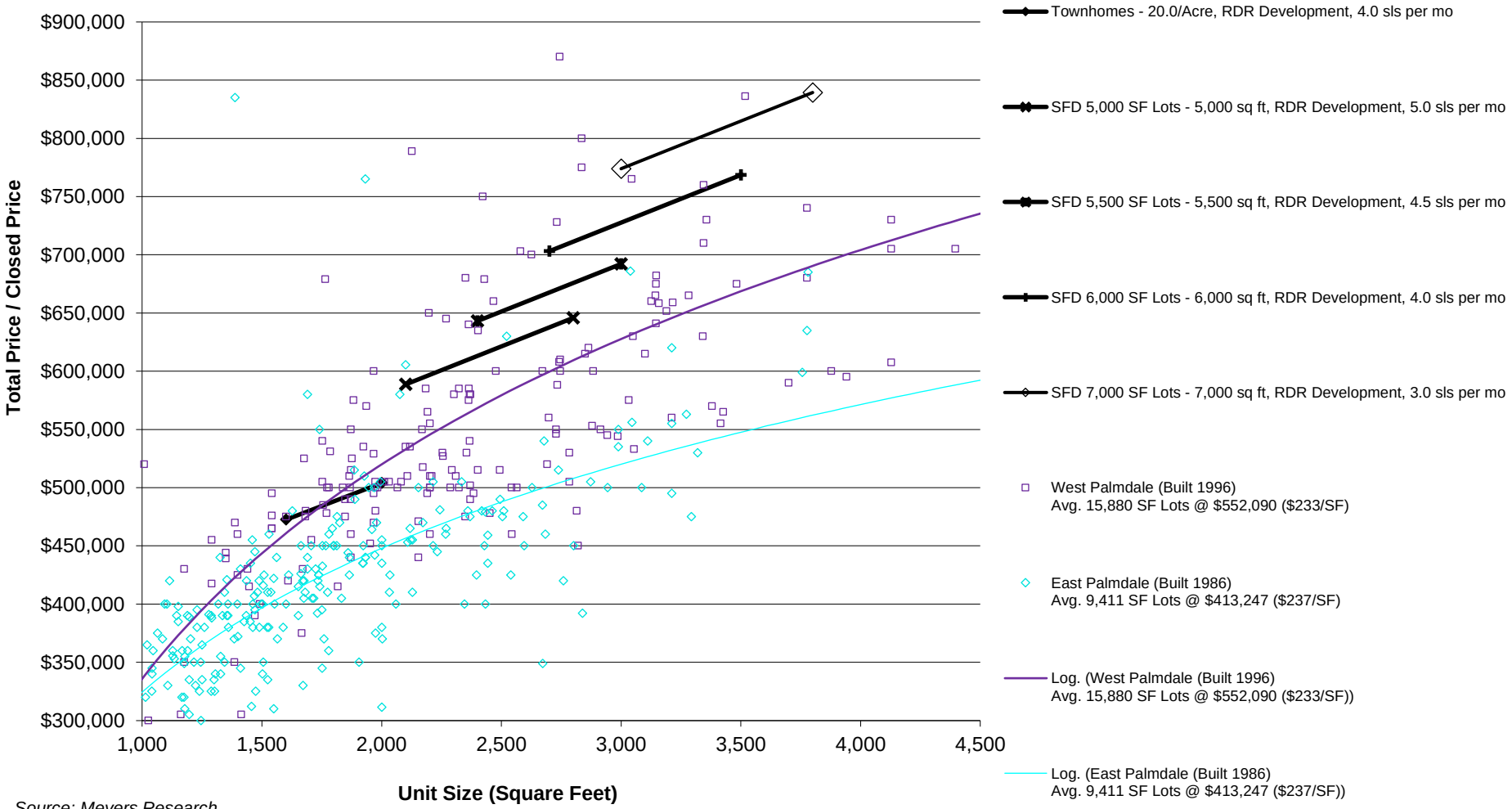


Source: Zonda

AREA NEW HOME CLOSINGS (EAST PALMDALE VS WEST PALMDALE)

Competitive Market Assessment

This pricing analysis reviews all closed homes in West Palmdale versus East Palmdale with SR-14 as the City division line. It is clear here that pricing in West Palmdale achieves a notable premium over the east part of the City. Our recommended prices for Ritter Ranch are well above East Palmdale with even the attached series above the trend for single-family homes in this area. Ritter Ranch's prices are at the top of the West Palmdale market but amid established higher end values (again our recommendations are a step above what is offered but by no means would be considered too aggressive as better homes in the market commonly sell from $600,000 to over $800,000).

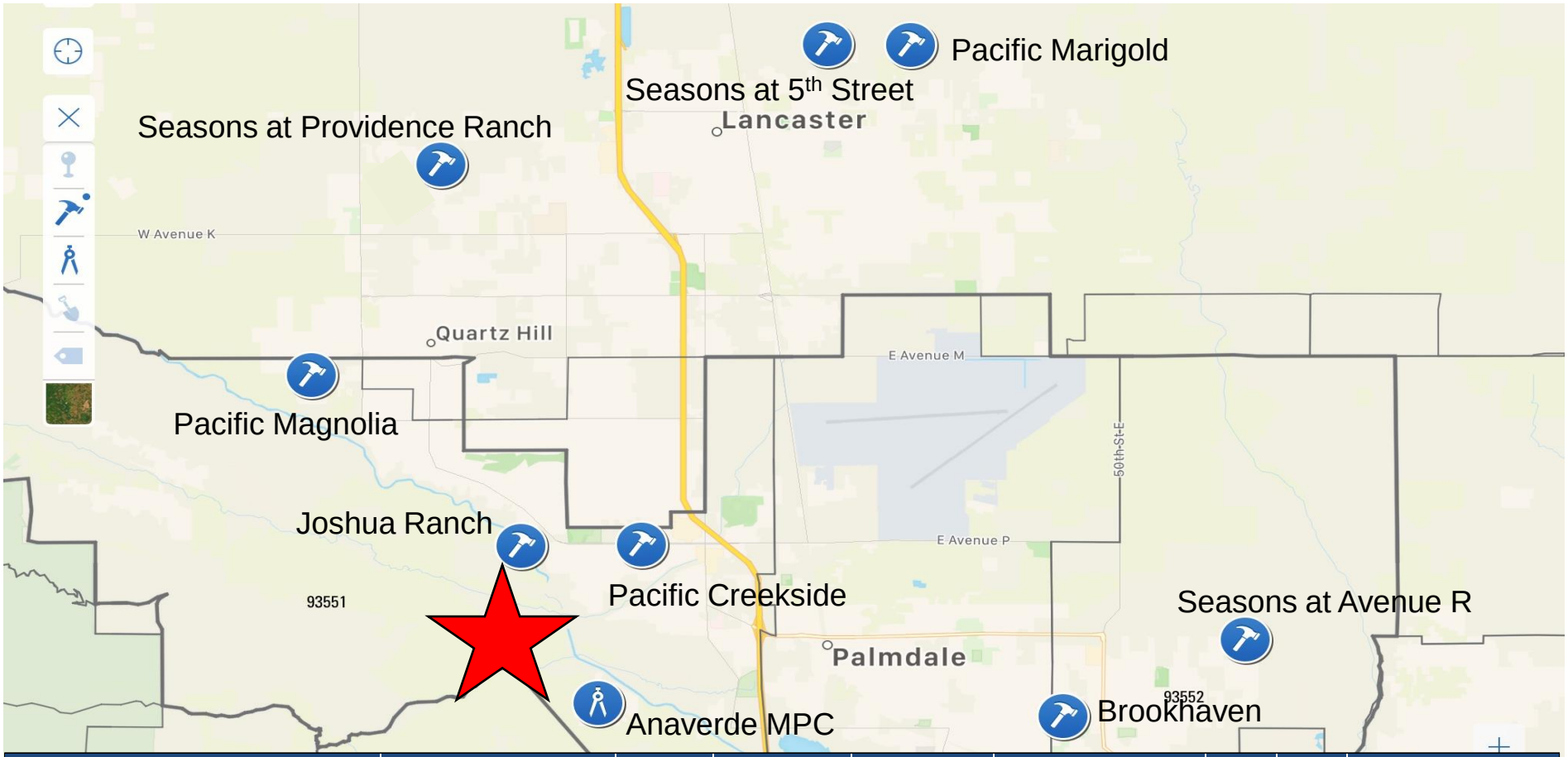


Source: Meyers Research

NEW HOME COMPARABLE MAP

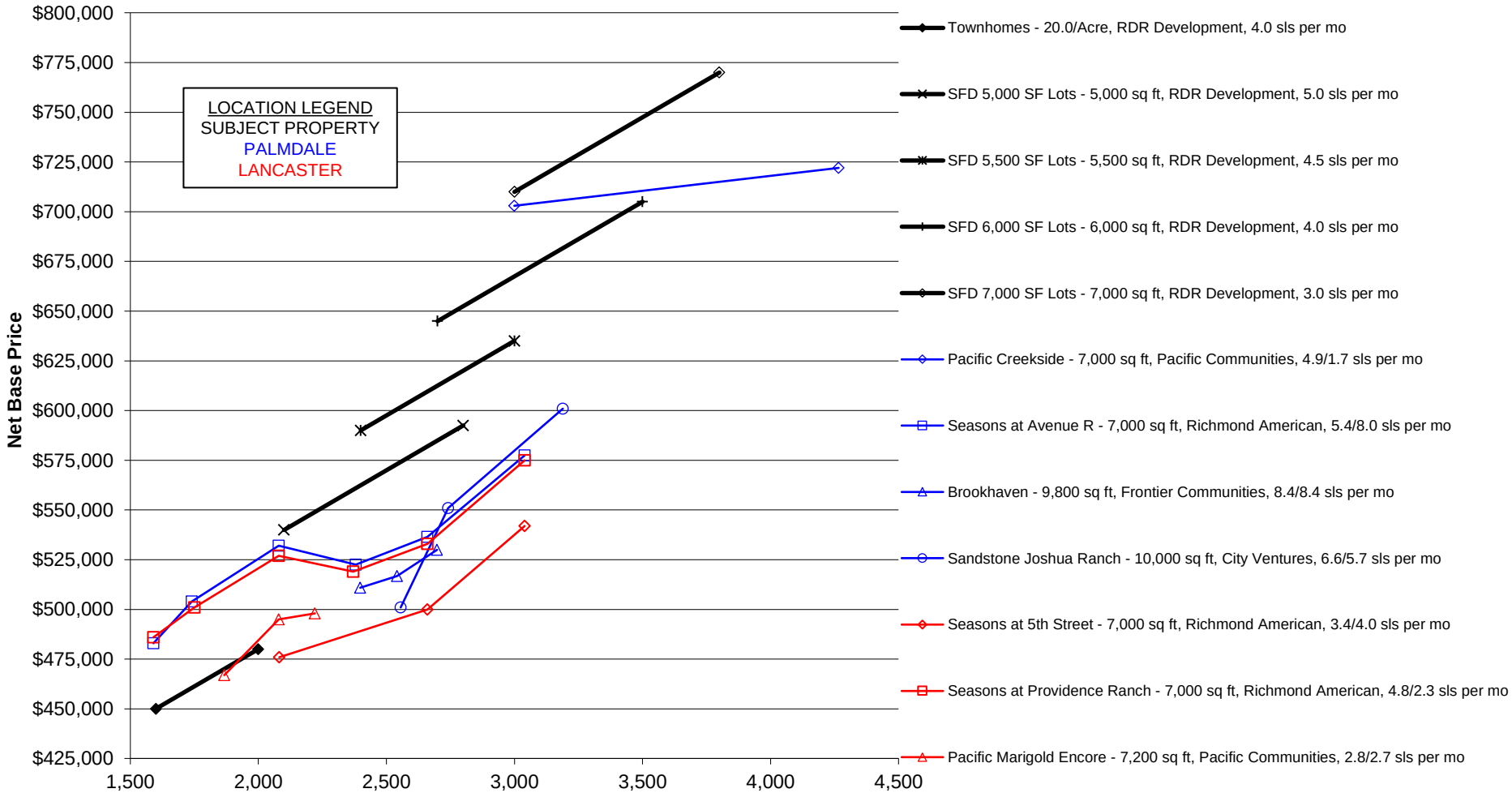
Competitive Market Assessment

Zonda



COMMUNITY	BUILDER	LOT SIZE	UNIT COUNT SUMMARY				CONFIGURATION	SALES PACE		UNIT SIZE RANGE			NET BASE PRICE RANGE* (*AFTER PRICE REDUCING INCENTIVES)			AVERAGE OPTIONS	AVERAGE PREMIUMS	TOTAL PRICE RANGE (NET BASE + O/U + PREMIUMS)		
			TOTAL	TOTAL SOLD	LAST 3 MO.	REMAIN		HISTORICAL	LAST 3 MO.	MIN	MAX	AVG	MIN	MAX	AVG			MIN	MAX	AVG
Pacific Creekside	Pacific Communities	7,000	93	80	5	13	7,000	4.9	1.7	2,999	4,266	3,633	$702,990	$721,990	$712,490	$35,000	$12,000	$749,990	$768,990	$759,490
Seasons at Avenue R	Richmond American	7,000	162	141	24	21	7,000	5.4	8.0	1,590	3,040	2,248	$482,990	$577,490	$525,907	$25,000	$10,000	$517,990	$612,490	$560,907
Brookhaven	Frontier Communities	9,800	16	13	0	3	9,800	8.4	8.4	2,398	2,697	2,545	$510,930	$530,010	$519,243	$25,000	$10,000	$545,930	$565,010	$554,243
Sandstone Joshua Ranch	City Ventures	10,000	89	89	17	0	10,000	6.6	5.7	2,556	3,189	2,829	$500,990	$600,990	$550,990	$70,000	$10,000	$580,990	$680,990	$630,990
Seasons at 5th Street	Richmond American	7,000	35	20	12	15	7,000	3.4	4.0	2,082	3,040	2,594	$475,990	$541,990	$505,990	$20,000	$10,000	$505,990	$571,990	$535,990
Seasons at Providence Ranch	Richmond American	7,000	147	138	7	9	7,000	4.8	2.3	1,590	3,040	2,248	$485,990	$574,990	$523,490	$20,000	$15,000	$520,990	$609,990	$558,490
Pacific Marigold Encore	Pacific Communities	7,200	43	12	8	31	7,200	2.8	2.7	1,867	2,220	2,056	$466,990	$497,990	$486,657	$25,000	$8,000	$499,990	$530,990	$519,657
	TOTALS:		585	493	73	92	AVERAGE:	5.2	4.7	2,155	3,070	2,593	$518,124	$577,921	$546,395	$31,429	$10,714	$560,267	$620,064	$588,538
	COMMUNITY AVG:		84	70	10	13	MEDIAN:	4.9	4.0	2,082	3,040	2,545	$485,990	$574,990	$523,490	$25,000	$10,000	$520,990	$609,990	$558,490

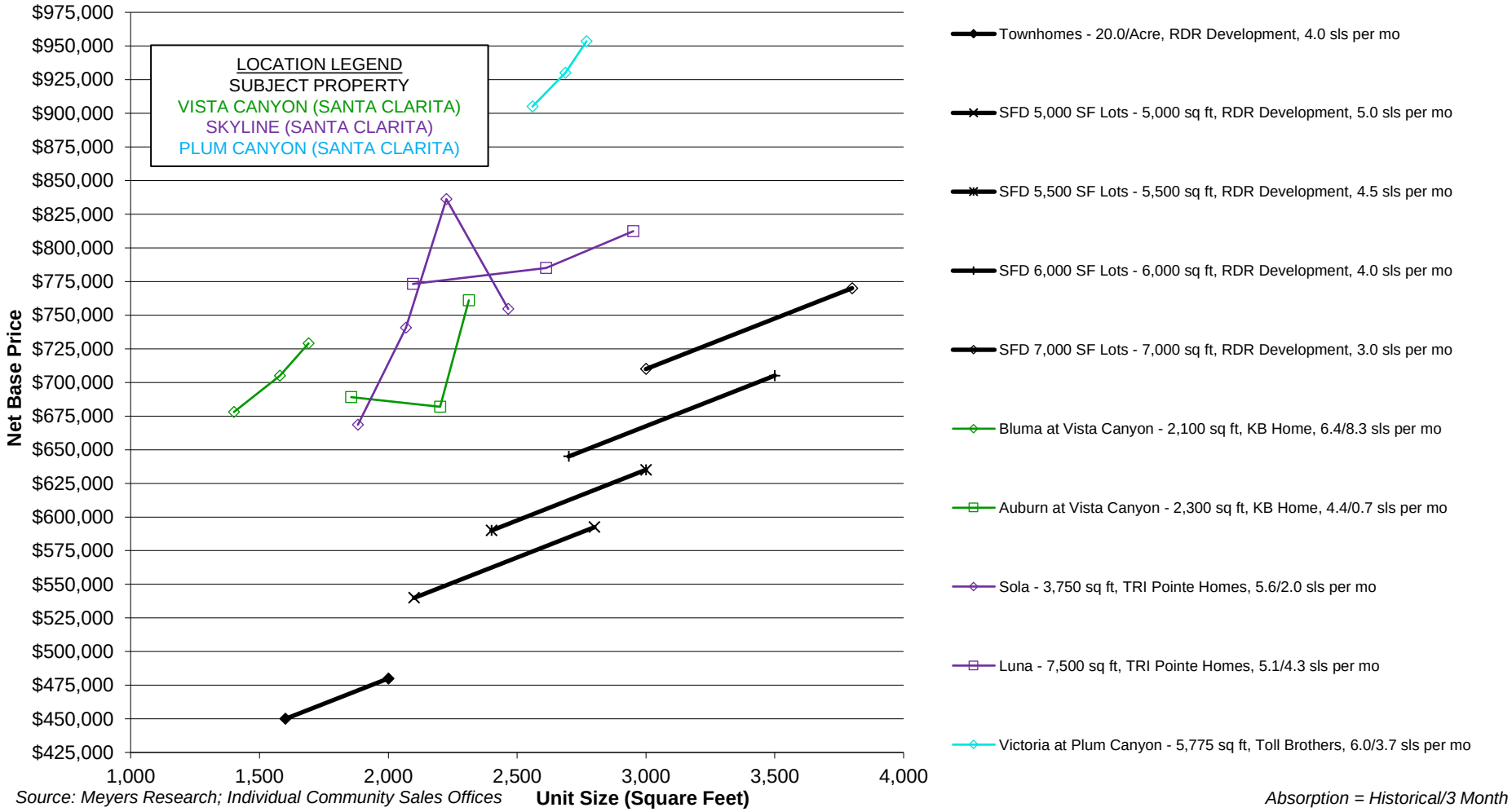
From a base price perspective our recommended prices position Ritter Ranch's initial product release at the top of the Antelope Valley new home market. The Subject's single family detached home prices are generally above what is offered which makes sense given the environment planned and setting. Ritter Ranch's Townhome series are below single family detached home prices in Palmdale and consistent with Lancaster given the attached home market is somewhat untested and the Subject's tax rate and HOA estimates will push the overall positioning upward (see the monthly payment chart on page 26).



Source: Meyers Research; Individual Community Sales Offices

Absorption = Historical/3 Month

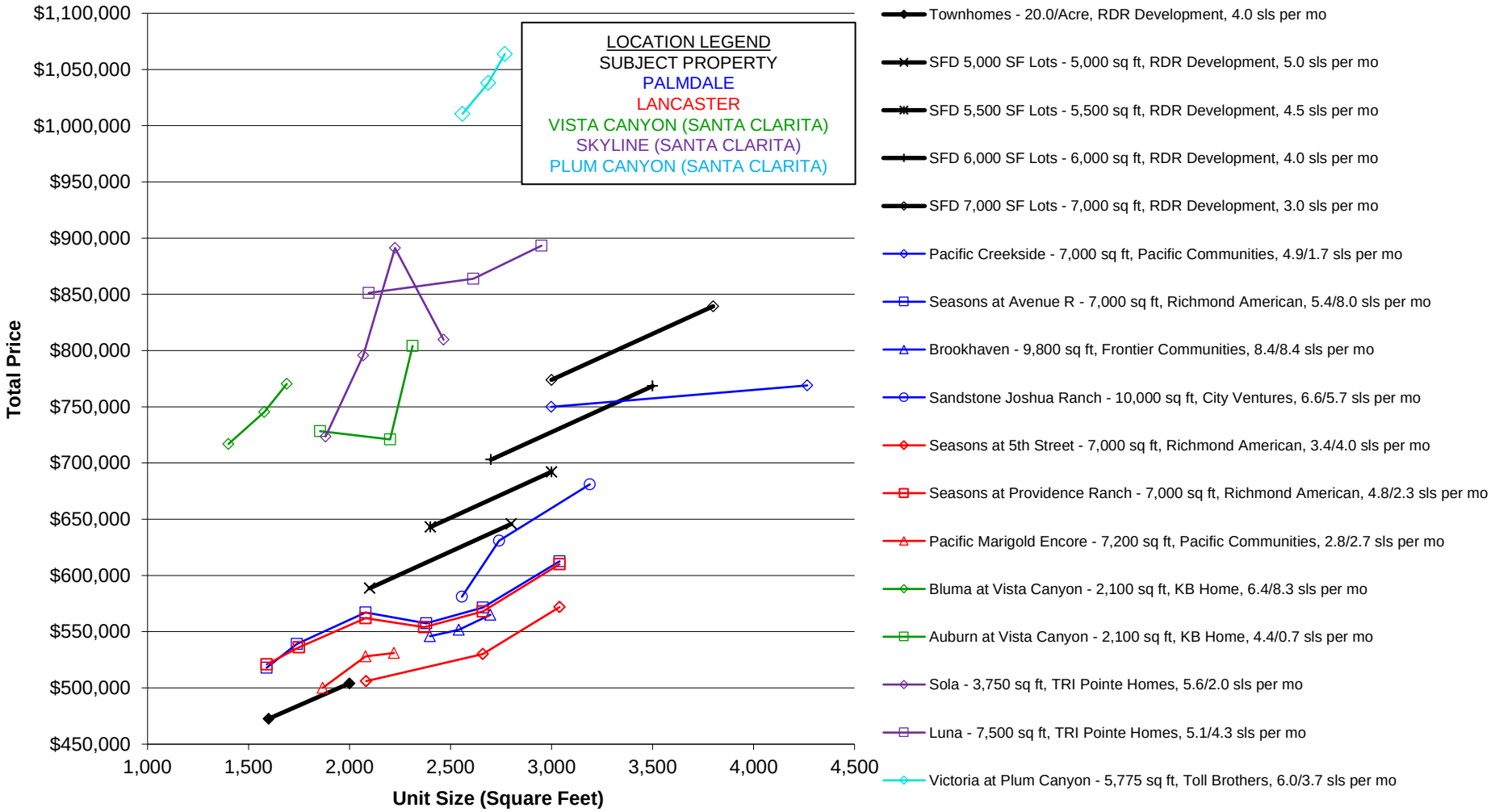
From a base price perspective our recommended prices position Ritter Ranch at a discount to active subdivisions in northeast Santa Clarita. Like all areas of Southern California, Santa Clarita has experienced sharp appreciation over the past year with current new home prices starting in the mid to high $600,000s up to $1,000,000. Submarket wide Santa Clarita new homes average in the mid $700,000s for a home on a higher density lot while the Antelope Valley is in the mid $500,000s for more conventional lot sizes. Our average price for Ritter Ranch is +/-$600,000 which remains a notable value from what is available further south on SR-14.



Source: Meyers Research; Individual Community Sales Offices

Absorption = Historical/3 Month

Once options and upgrades and premiums are factored in the Subject's overall positioning is in the middle between active communities in the Antelope Valley and active communities in northeast Santa Clarita Valley. Given the overall environment anticipated at Ritter Ranch this pricing strategy will create a rather compelling reason to save on a home and live in a state-of-the-art community in Palmdale over Santa Clarita.

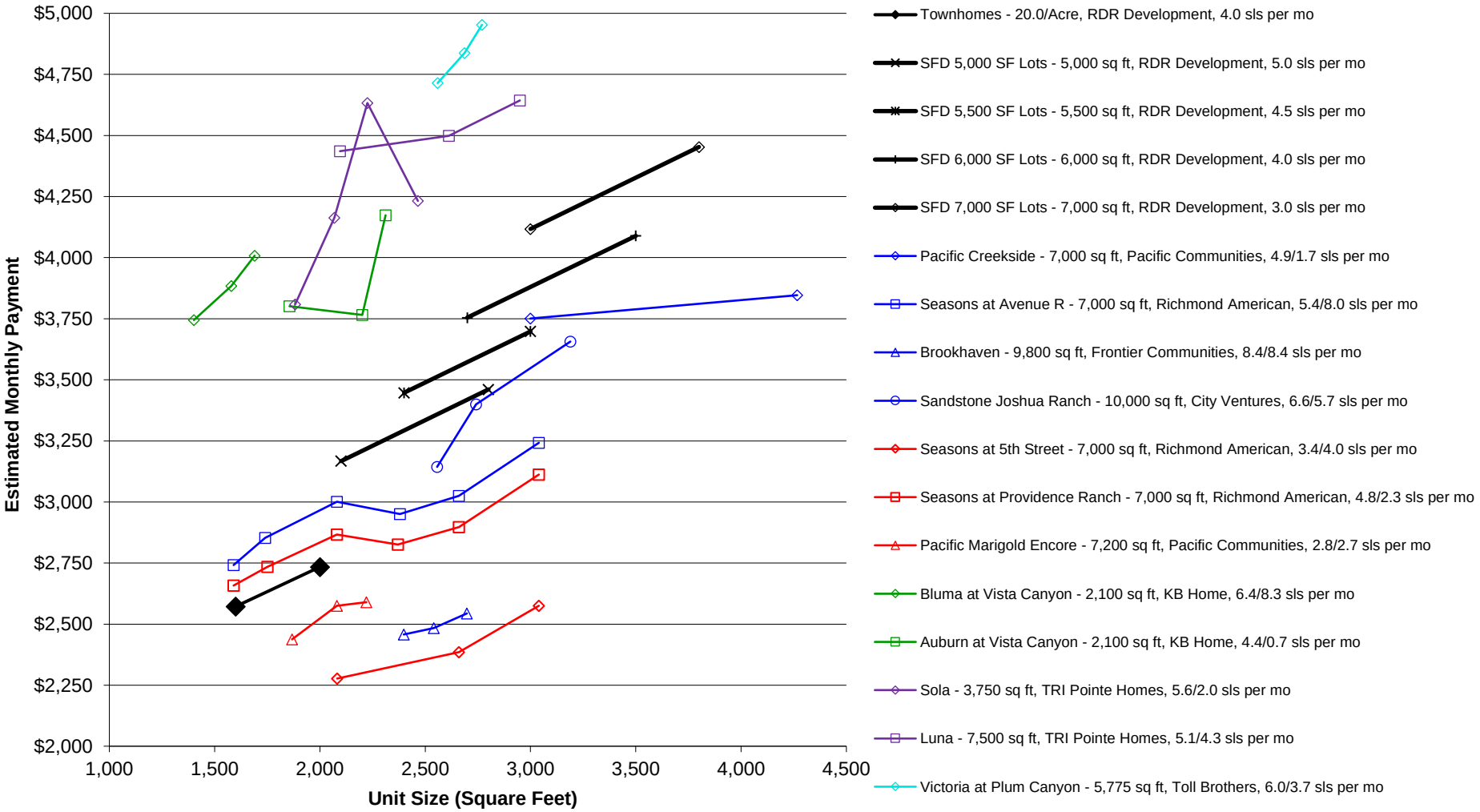


Source: Meyers Research; Individual Community Sales Offices

Absorption = Historical/3 Month

Zonda

Once a 2.0% total tax rate and a $150 monthly HOA assessment are factored in the Subject's true positioning in the greater competitive market is revealed. Ritter Ranch is priced truly in between the two submarkets. Overall, Zonda supports this market positioning given the understanding that the Subject will be the most complete living environment in the Palmdale area and community execution will be exceptional all while remaining at a clear discount to Santa Clarita.



Source: Meyers Research; Individual Community Sales Offices

Absorption = Historical/3 Month

ACTIVE NEW HOME COMMUNITY FLOORPLAN SUMMARY

Competitive Market Assessment

Zonda

COMMUNITY SPECIFICS AND SALES PACE				FLOORPLAN SUMMARY					COMPETITIVE MARKET PRICING SUMMARY														
Project Name		**Builder Name**								Base	Current Incentives			Net Base	Net Base	Typical			Total	Monthly Payment Inputs			80.0%
Location		**Master Plan**		Size					Base	Price/	Price	Options /	Closing $ /	Price ($	Price/	Options /		Total	Price/	Monthly	Base	Addl	3.2%
Product Details		Sales Summary		SF	Bed	Bath	Level	Pkg	Price	Sq. Ft.	Reduction	Upgrades	Other	Reduction)	Sq. Ft.	Upgrades	Premiums	Price	SF	HOA	Tax	Taxes	Mo.Pmt.
Pacific Creekside		**Pacific Communities**		2,999	3	2.5	0	2	$702,990	$234	$0	$0	($3,000)	$702,990	$234	$35,000	$12,000	$749,990	$250	$0	1.20%	0.65%	$3,751
Palmdale		-		4,266	5.3.5	2.0	2	2	$721,990	$169	$0	$0	($3,000)	$721,990	$169	$35,000	$12,000	$768,990	$180	$0	1.20%	0.65%	$3,846
Product:	Single Family	Total Units:	93																				
Configuration:	7,000	Units Sold:	80																				
Lot Dimensions:	70x100	3 Months Sold:	5																				
Sales Open Date:	Mar-20	Units Remaining:	13																				
Overall Sales Rate:	4.9	% Remaining:	14%																				
3 Mon. Sales Rate:	1.7																						
			Totals/Averages:	3,633					$712,490	$196	$0	$0	($3,000)	$712,490	$196	$35,000	$12,000	$759,490	$209	$0	1.20%	0.65%	$3,799
Seasons at Avenue R		**Richmond American**		1,590	3	2.0	1	2	$482,990	$304	$0	$0	($14,490)	$482,990	$304	$25,000	$10,000	$517,990	$326	$0	1.20%	1.00%	$2,742
Palmdale		-		1,740	3	2.0	1	2	$503,990	$290	$0	$0	($15,120)	$503,990	$290	$25,000	$10,000	$538,990	$310	$0	1.20%	1.00%	$2,853
Product:	Single Family	Total Units:	162	2,080	3	2.0	1	2	$531,990	$256	$0	$0	($15,960)	$531,990	$256	$25,000	$10,000	$566,990	$273	$0	1.20%	1.00%	$3,001
Configuration:	7,000	Units Sold:	141	2,380	3	2.5	2	2	$522,490	$220	$0	$0	($15,675)	$522,490	$220	$25,000	$10,000	$557,490	$234	$0	1.20%	1.00%	$2,951
Lot Dimensions:	70x100	3 Months Sold:	24	2,660	3	2.5	2	2	$536,490	$202	$0	$0	($16,095)	$536,490	$202	$25,000	$10,000	$571,490	$215	$0	1.20%	1.00%	$3,025
Sales Open Date:	Jun-19	Units Remaining:	21	3,040	4	2.5	2	2	$577,490	$190	$0	$0	($17,325)	$577,490	$190	$25,000	$10,000	$612,490	$201	$0	1.20%	1.00%	$3,242
Overall Sales Rate:	5.4	% Remaining:	13%																				
3 Mon. Sales Rate:	8.0																						
			Totals/Averages:	2,248					$525,907	$234	$0	$0	($15,777)	$525,907	$234	$25,000	$10,000	$560,907	$249	$0	1.20%	1.00%	$2,969
Brookhaven		**Frontier Communities**		2,398	3	2.5	2	2	$510,930	$213	$0	$0	($8,000)	$510,930	$213	$25,000	$10,000	$545,930	$228	$0	1.25%	0.00%	$2,457
Palmdale		-		2,541	3	2.5	3	2	$516,790	$203	$0	$0	($8,000)	$516,790	$203	$25,000	$10,000	$551,790	$217	$0	1.25%	0.00%	$2,484
Product:	Single Family	Total Units:	16	2,697	3	2.5	2	3	$530,010	$197	$0	$0	($8,000)	$530,010	$197	$25,000	$10,000	$565,010	$209	$0	1.25%	0.00%	$2,543
Configuration:	9,800	Units Sold:	13																				
Lot Dimensions:	70x140																						
Sales Open Date:	Jun-21	Units Remaining:	3																				
Overall Sales Rate:	8.4	% Remaining:	19%																				
3 Mon. Sales Rate:	8.4																						
			Totals/Averages:	2,545					$519,243	$204	$0	$0	($8,000)	$519,243	$204	$25,000	$10,000	$554,243	$218	$0	1.25%	0.00%	$2,495
Sandstone Joshua Ranch		**City Ventures**		2,556	4	2.5	1	2	$500,990	$196	$0	$0	($5,000)	$500,990	$196	$70,000	$10,000	$580,990	$227	$165	1.20%	0.80%	$3,143
Palmdale		-		2,741	4	2.5	1	2	$550,990	$201	$0	$0	($5,000)	$550,990	$201	$70,000	$10,000	$630,990	$230	$165	1.20%	0.80%	$3,400
Product:	Single Family	Total Units:	89	3,189	4	3.5	2	3	$600,990	$188	$0	$0	($5,000)	$600,990	$188	$70,000	$10,000	$680,990	$214	$165	1.20%	0.80%	$3,656
Configuration:	10,000	Units Sold:	89																				
Lot Dimensions:	80x125	3 Months Sold:	17																				
Sales Open Date:	Jun-20	Units Remaining:	0																				
Overall Sales Rate:	6.6	% Remaining:	0%																				
3 Mon. Sales Rate:	5.7																						
			Totals/Averages:	2,829					$550,990	$195	$0	$0	($5,000)	$550,990	$195	$70,000	$10,000	$630,990	$223	$165	1.20%	0.80%	$3,400

ACTIVE NEW HOME COMMUNITY FLOORPLAN SUMMARY

Competitive Market Assessment

Zonda

COMMUNITY SPECIFICS AND SALES PACE				FLOORPLAN SUMMARY					COMPETITIVE MARKET PRICING SUMMARY														
Project Name		**Builder Name**								Base	Current Incentives			Net Base	Net Base	Typical			Total	Monthly Payment Inputs			80.0%
Location		**Master Plan**		Size					Base	Price/	Price	Options /	Closing $ /	Price ($	Price/	Options /		Total	Price/	Monthly	Base	Addl	3.2%
Product Details		Sales Summary		SF	Bed	Bath	Level	Pkg	Price	Sq. Ft.	Reduction	Upgrades	Other	Reduction)	Sq. Ft.	Upgrades	Premiums	Price	SF	HOA	Tax	Taxes	Mo.Pmt.
Seasons at 5th Street		**Richmond American**		2,082	3	2.0	1	2	$475,990	$229	$0	$0	($14,280)	$475,990	$229	$20,000	$10,000	$505,990	$243	$0	1.25%	0.00%	$2,278
Lancaster		**-**		2,660	3	2.5	2	2	$499,990	$188	$0	$0	($15,000)	$499,990	$188	$20,000	$10,000	$529,990	$199	$0	1.25%	0.00%	$2,386
Product:	Single Family	Total Units:	35	3,040	4	2.5	2	2	$541,990	$178	$0	$0	($16,260)	$541,990	$178	$20,000	$10,000	$571,990	$188	$0	1.25%	0.00%	$2,575
Configuration:	7,000	Units Sold:	20																				
Lot Dimensions:	70x100	3 Months Sold:	12																				
Sales Open Date:	Feb-21	Units Remaining:	15																				
Overall Sales Rate:	3.4	% Remaining:	43%																				
3 Mon. Sales Rate:	4.0																						
			Totals/Averages:	2,594					$505,990	$195	$0	$0	($15,180)	$505,990	$195	$20,000	$10,000	$535,990	$207	$0	1.25%	0.00%	$2,413
Seasons at Providence Ranch		**Richmond American**		1,590	3	2.0	1	2	$485,990	$306	$0	$0	($14,580)	$485,990	$306	$20,000	$15,000	$520,990	$328	$0	1.25%	0.72%	$2,658
Lancaster		**-**		1,750	3	2.0	1	2	$500,990	$286	$0	$0	($15,030)	$500,990	$286	$20,000	$15,000	$535,990	$306	$0	1.25%	0.72%	$2,734
Product:	Single Family	Total Units:	147	2,080	3	2.0	1	2	$526,990	$253	$0	$0	($15,810)	$526,990	$253	$20,000	$15,000	$561,990	$270	$0	1.25%	0.72%	$2,867
Configuration:	7,000	Units Sold:	138	2,370	3	2.5	2	2	$518,990	$219	$0	$0	($15,570)	$518,990	$219	$20,000	$15,000	$553,990	$234	$0	1.25%	0.72%	$2,826
Lot Dimensions:	70x100	3 Months Sold:	7	2,660	3	2.5	2	2	$532,990	$200	$0	$0	($15,990)	$532,990	$200	$20,000	$15,000	$567,990	$214	$0	1.25%	0.72%	$2,898
Sales Open Date:	Mar-19	Units Remaining:	9	3,040	4	2.5	2	2	$574,990	$189	$0	$0	($17,250)	$574,990	$189	$20,000	$15,000	$609,990	$201	$0	1.25%	0.72%	$3,112
Overall Sales Rate:	4.8	% Remaining:	6%																				
3 Mon. Sales Rate:	2.3																						
			Totals/Averages:	2,248					$523,490	$233	$0	$0	($15,705)	$523,490	$233	$20,000	$15,000	$558,490	$248	$0	1.25%	0.72%	$2,849
Pacific Marigold Encore		**Pacific Communities**		1,867	3	2.0	1	2	$466,990	$250	$0	$0	($2,500)	$466,990	$250	$25,000	$8,000	$499,990	$268	$0	1.20%	0.50%	$2,438
Lancaster		**-**		2,080	3	2.0	1	2	$494,990	$238	$0	$0	($2,500)	$494,990	$238	$25,000	$8,000	$527,990	$254	$0	1.20%	0.50%	$2,575
Product:	Single Family	Total Units:	43	2,220	3	2.0	1	2	$497,990	$224	$0	$0	($2,500)	$497,990	$224	$25,000	$8,000	$530,990	$239	$0	1.20%	0.50%	$2,589
Configuration:	7,200	Units Sold:	12																				
Lot Dimensions:	72x100	3 Months Sold:	8																				
Sales Open Date:	Mar-21	Units Remaining:	31																				
Overall Sales Rate:	2.8	% Remaining:	72%																				
3 Mon. Sales Rate:	2.7																						
			Totals/Averages:	2,056					$486,657	$237	$0	$0	($2,500)	$486,657	$237	$25,000	$8,000	$519,657	$253	$0	1.20%	0.50%	$2,534

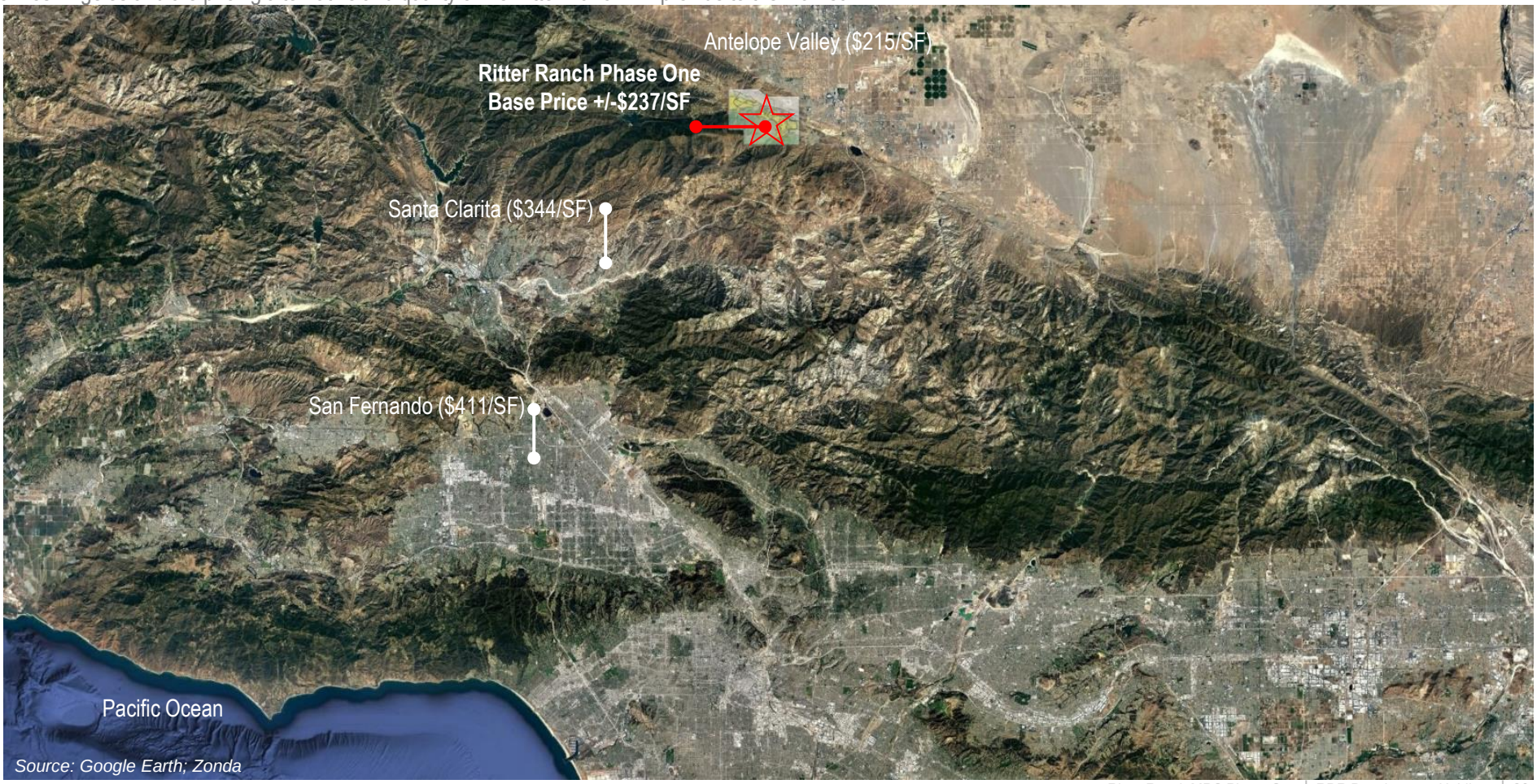
Location Analysis

Ritter Ranch Master Planned Community (Phase One)

RITTER RANCH OFFERS AN ATTRACTIVE VALUE PROPOSITION

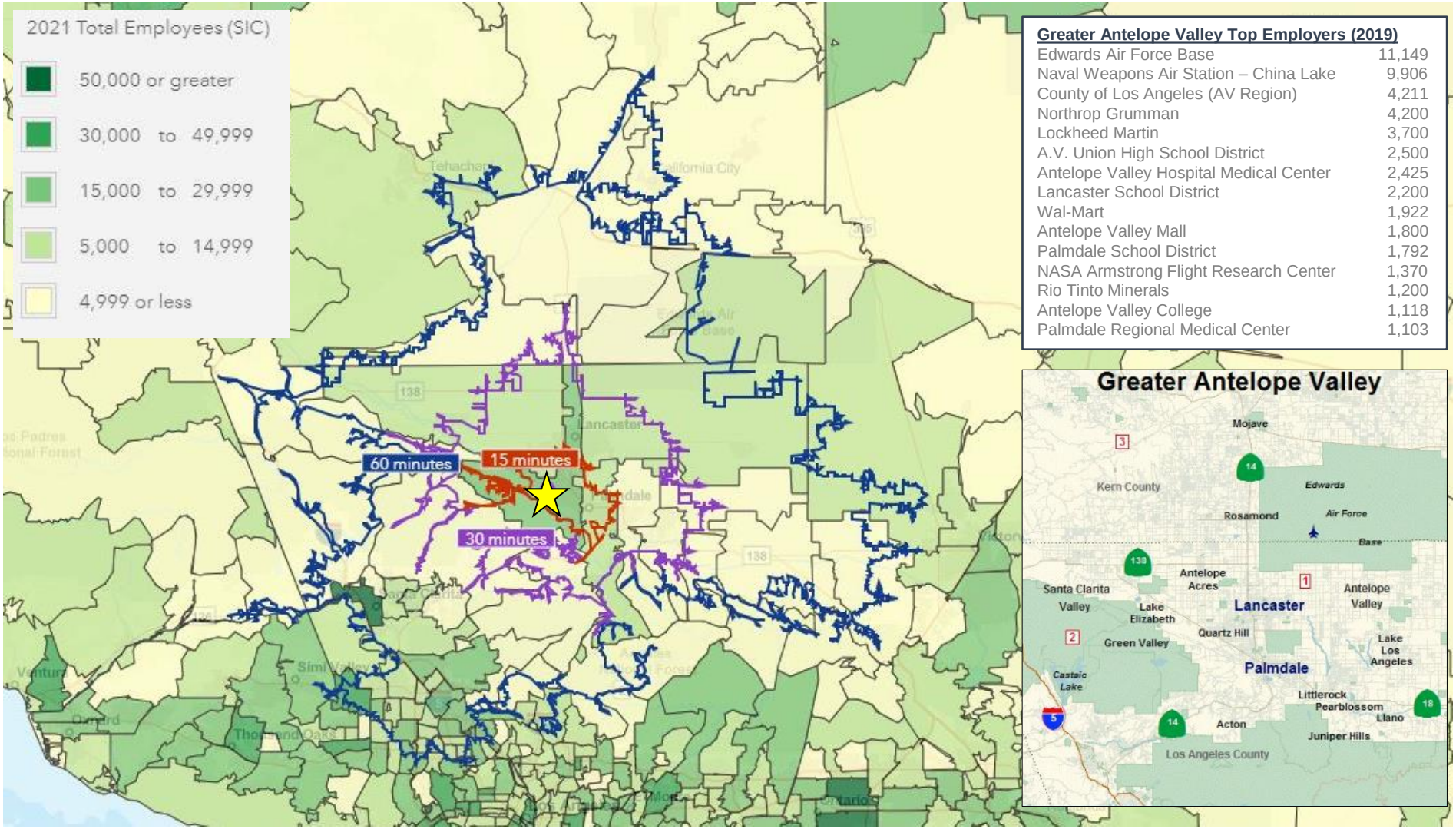
Location Analysis

Ritter Ranch is an assemblage of +/-767.2 acres in west Palmdale. The aerial map below provides perspective on the Subject Property's location within the Antelope Valley (Palmdale and Lancaster) and greater Los Angeles County. While the site is technically on the fringe of the City, Ritter Ranch is in the preferred location within the immediate area as Palmdale is considered more attractive than Lancaster and west Palmdale is considered more attractive than east Palmdale. Phase One of the development has some infrastructure in place including roads and utilities. For-sale new home supply in Los Angeles County is very low compared to employment growth in the County which has subsequently pushed home prices (and commute times) near the top of California and the greater Country. **Ritter Ranch will be a new master planned community that will add much needed new home options in a location that is already in the path of development, were homebuyers have historically gone for value and within reasonable commute times to employment in both the Antelope Valley and Santa Clarita Valley.** Note the new home base price per square foot values in "closer in" areas of Los Angeles and the pricing alternative and quality of life Ritter Ranch will provide to the market.



Source: Google Earth; Zonda

Ritter Ranch is located roughly five miles from SR-14 which serves as the main thoroughfare for commuters to and from employment clusters shown on the following page. While many residents at the Subject will work from home (or may even be retired), many will not be and have a daily or multiple weekday commute. There is growing employment locally in Palmdale (+/-15-minute commute), however, outside of the Antelope Valley area many of the top employers start at a minimum of a 30-minute commute from the Subject (nonpeak travel times). The following map displays employment by block group in region and a 15-, 30-, and 60-minute drive time from Ritter Ranch.



Greater Antelope Valley Top Employers (2019)

Edwards Air Force Base	11,149
Naval Weapons Air Station – China Lake	9,906
County of Los Angeles (AV Region)	4,211
Northrop Grumman	4,200
Lockheed Martin	3,700
A.V. Union High School District	2,500
Antelope Valley Hospital Medical Center	2,425
Lancaster School District	2,200
Wal-Mart	1,922
Antelope Valley Mall	1,800
Palmdale School District	1,792
NASA Armstrong Flight Research Center	1,370
Rio Tinto Minerals	1,200
Antelope Valley College	1,118
Palmdale Regional Medical Center	1,103

Source: Zonda, ESRI

Zonda

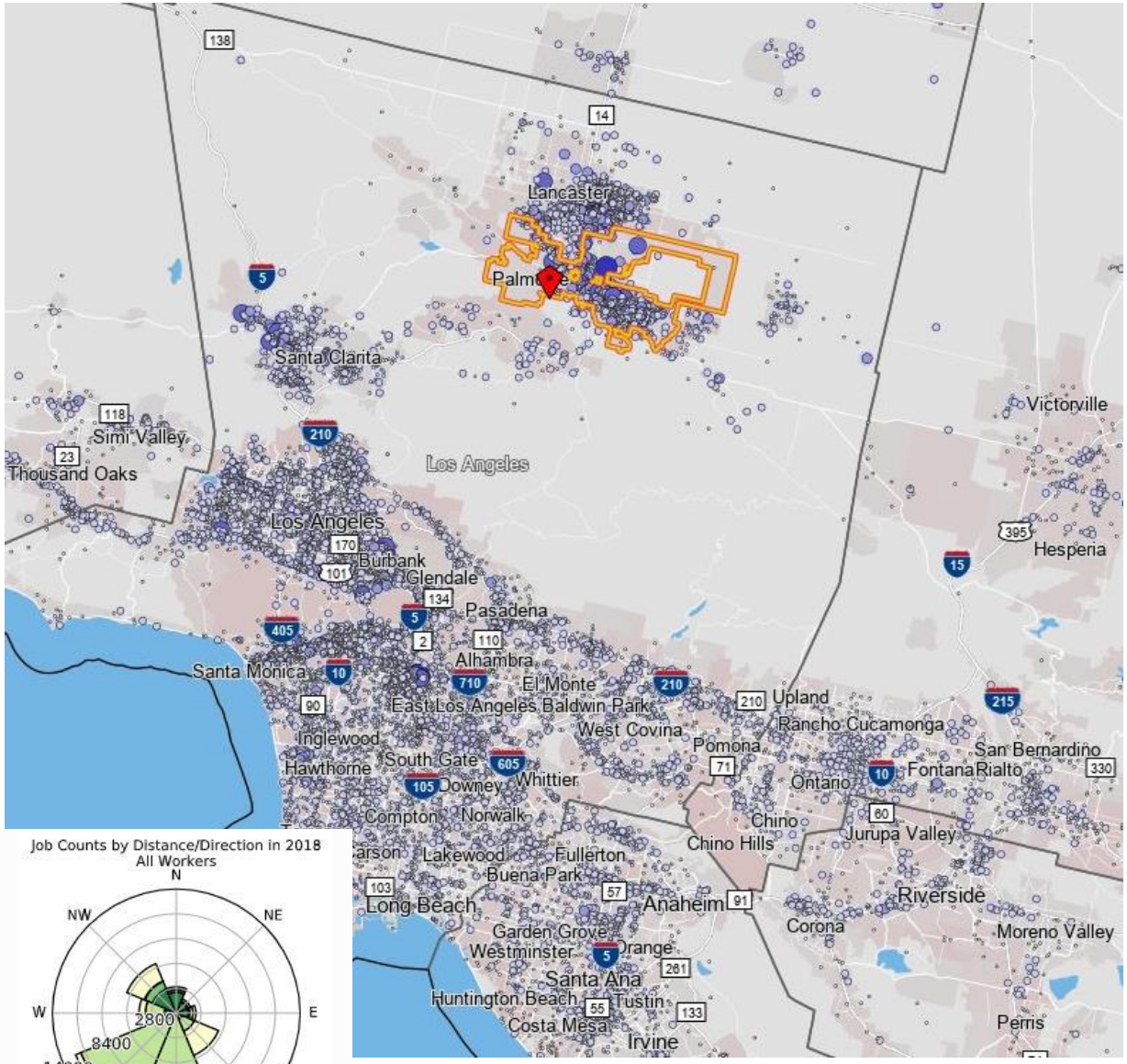
The color-concentrated areas indicate the highest proportion of commuter destinations from the City of Palmdale. Roughly 14% of residents live and work in the City of Palmdale, while 22% of residents commute 10 miles or less and a further 4.7% commute between 10 and 24 miles to employment clusters. Approximately 73% of residents commute 25 or more miles to employment primarily in and around Los Angeles.

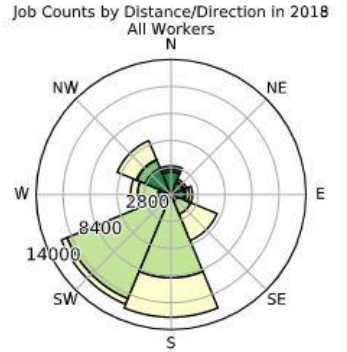
Jobs by Distance - Home Census Block to Work Census Block

	2018 Count	2018 Share
Total Private Primary Jobs	47,333	100.0%
Less than 10 miles	10,493	22.2%
10 to 24 miles	2,202	4.7%
25 to 50 miles	23,470	49.6%
Greater than 50 miles	11,168	23.6%

Jobs Counts by Places (Cities, CDPs, etc.) Where Workers are Employed - All Jobs

	2018 Count	2018 Share
All Places (Cities, CDPs, etc.)	63,283	100.0%
Los Angeles city, CA	14,380	22.7%
Palmdale city, CA	9,106	14.4%
Lancaster city, CA	7,641	12.1%
Santa Clarita city, CA	2,928	4.6%
Burbank city, CA	1,307	2.1%
Glendale city, CA	697	1.1%
Pasadena city, CA	577	0.9%
San Diego city, CA	557	0.9%
Long Beach city, CA	480	0.8%
Anaheim city, CA	476	0.8%
All Other Locations	25,134	39.7%

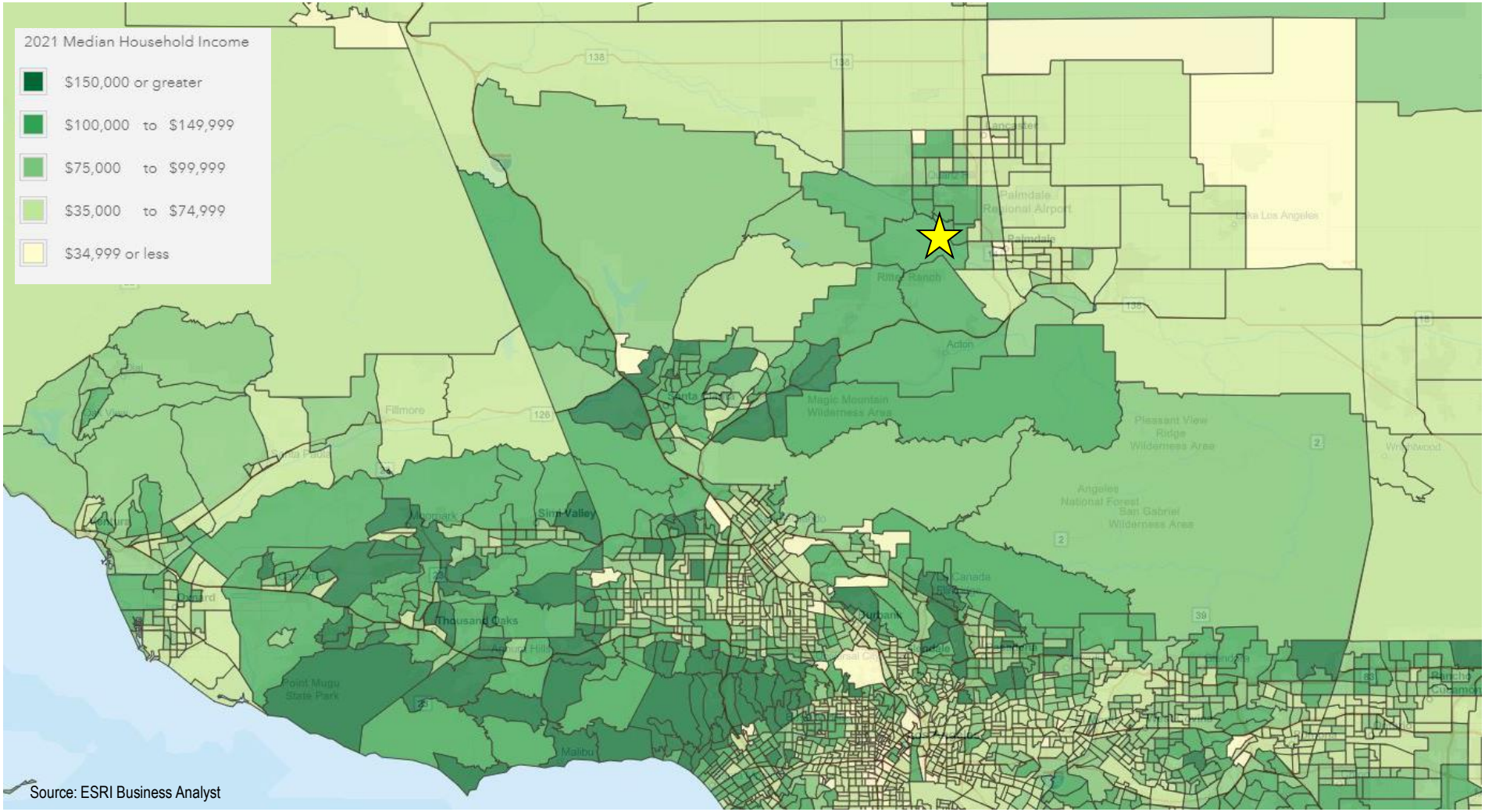




Source: On The Map Census

Zonda

The average income in the Subject's census tract is $110,552. West Palmdale is a desirable location for local households and incomes compared to the greater City are high. However, when we compare incomes to the vast wealth further south "closer in" to Los Angeles it becomes apparent that comparatively, attainably priced housing for the County should remain a focus. Being able to offer new home supply to the typical household in the region is very rare for the area. If we were to apply a basic four times multiplier to the average income the typical household would be able to afford a home +/-$440,000 just based on income alone. This is certainly a positive when planning a new for sale home community with price points that start in the $400,000s.



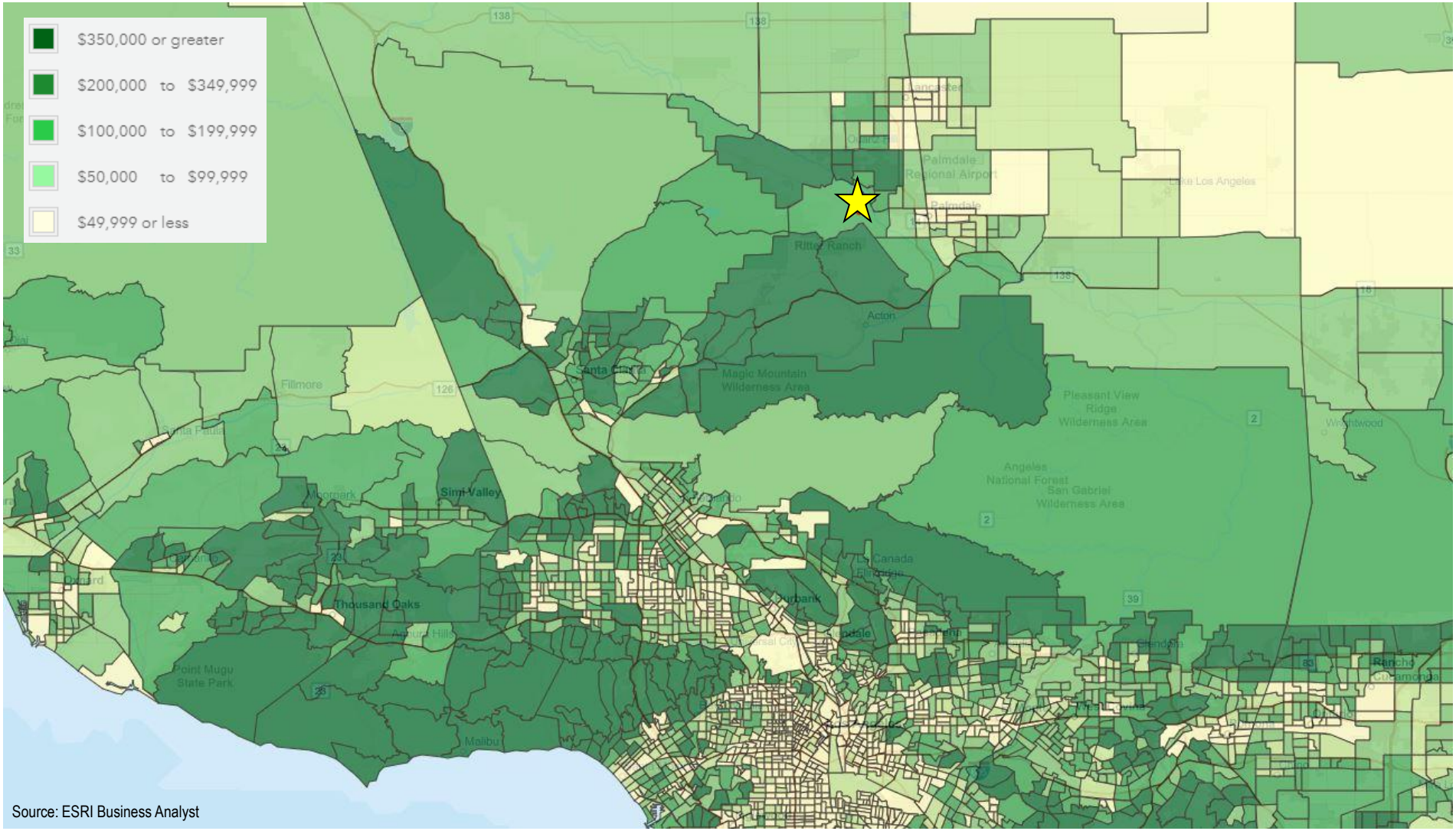
Source: ESRI Business Analyst

NET WORTH CONCENTRATION MAP

Location Analysis

Zonda

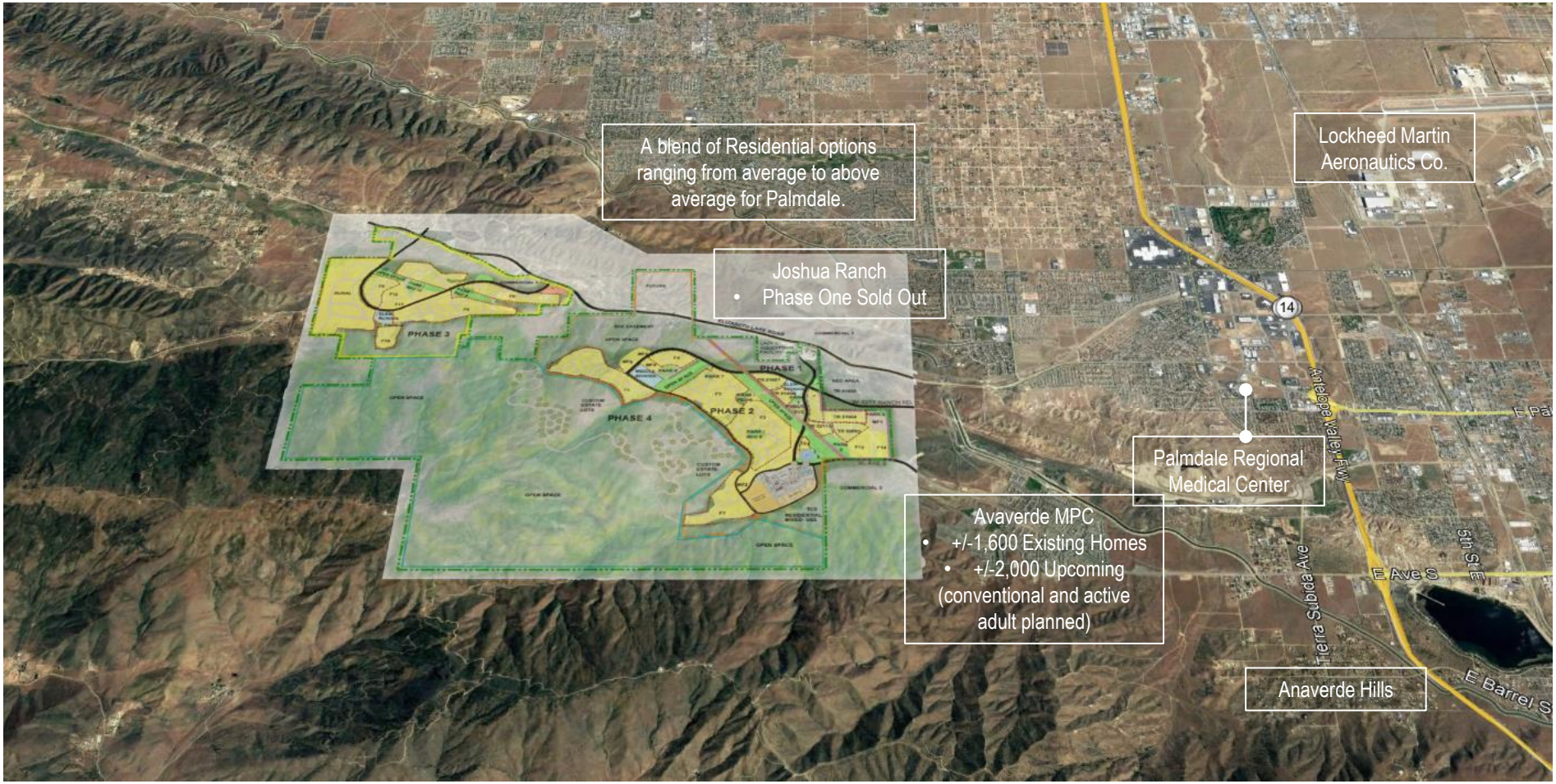
Net Worth in the immediate area is already elevated. While many of the residents at Ritter Ranch will be employed, there will be a notable percentage of retired households living at the Subject (in both the active adult segment in later phases and in conventional homes released in phase one) suggesting their annual income may not be the best indicator of ability to own a new home. Net worth is typically a more telling statistic for the potential of retirees to purchase in a particular area. As shown below, the median net worth in the Subject's census tract high at $308,628 with several neighboring census tracts to the north and south that are in excess of $500,000+.



Source: ESRI Business Analyst

Zonda

While on the western edge of development in the City of Palmdale, Ritter Ranch will not be a pioneering effort for the area. Anaverde is a relatively sought after but basic master planned community just east of the property. Home values in this community range from the mid $400,000s to the mid $600,000s for single family detached homes and plans have been announced to restart the community with an additional +/-2,000 homes. Further, since our initial analysis, Joshua Ranch has opened and sold out their first phase of 89 lots. **Ritter Ranch is a logical extension of residential development for the area and a clear upgrade from what is currently available in Palmdale. The Subject Property will fit well within the existing uses and will capitalize on the beautiful natural surroundings.** Note that there are a series of powerlines on the site. Our report assumes the owner will mitigate all potential impacts from the towers and wires.



Source: Google Earth; RDR Development Holdings

SITE PHOTOS (FROM APRIL 2019 SITE VISIT)

Location Analysis

Zonda

Economic & Demographic Overview

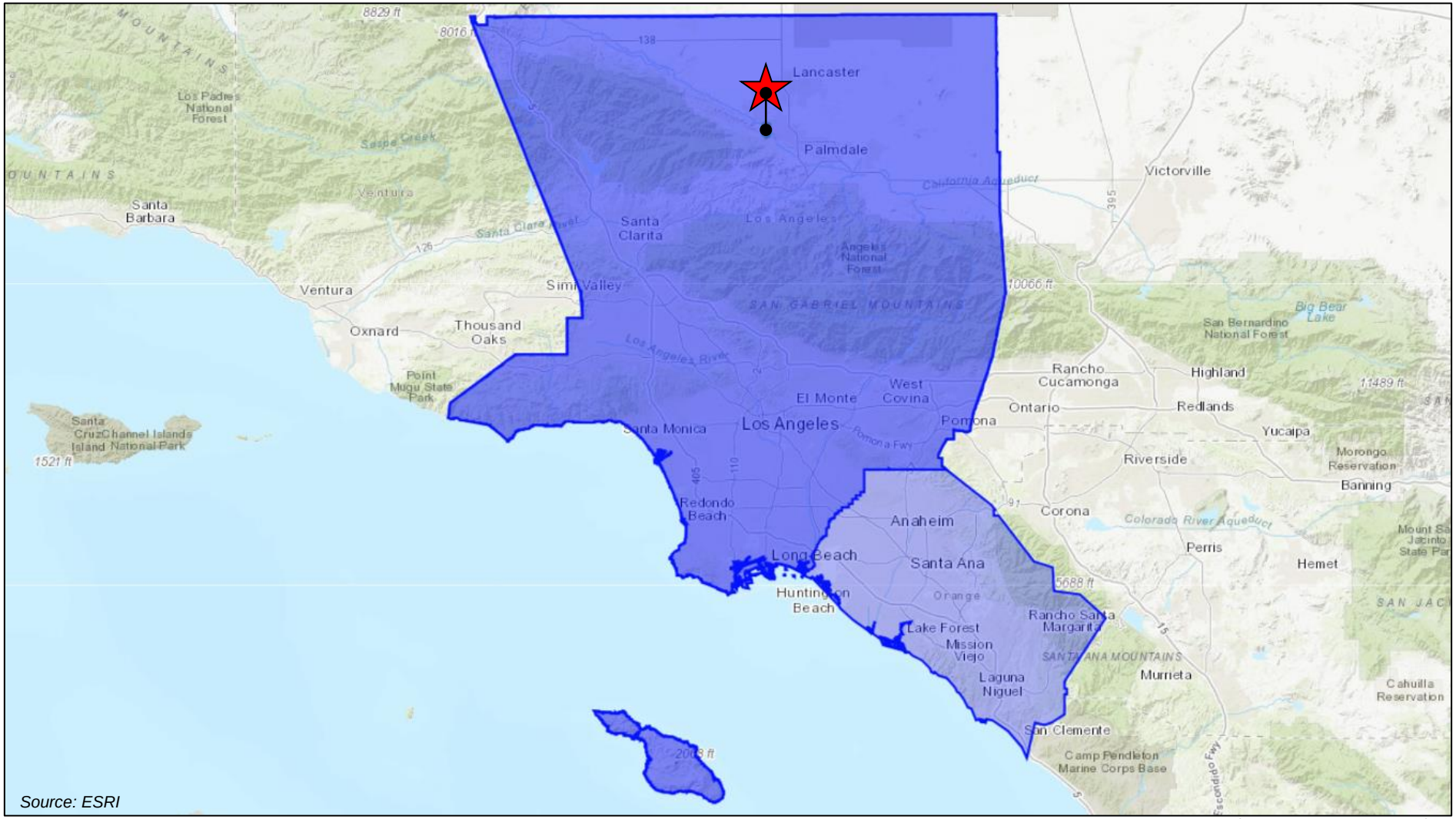
Ritter Ranch Master Planned Community (Phase One)

LOS ANGELES COUNTY AND LOS ANGELES-LONG BEACH-ANAHEIM MSA MAP

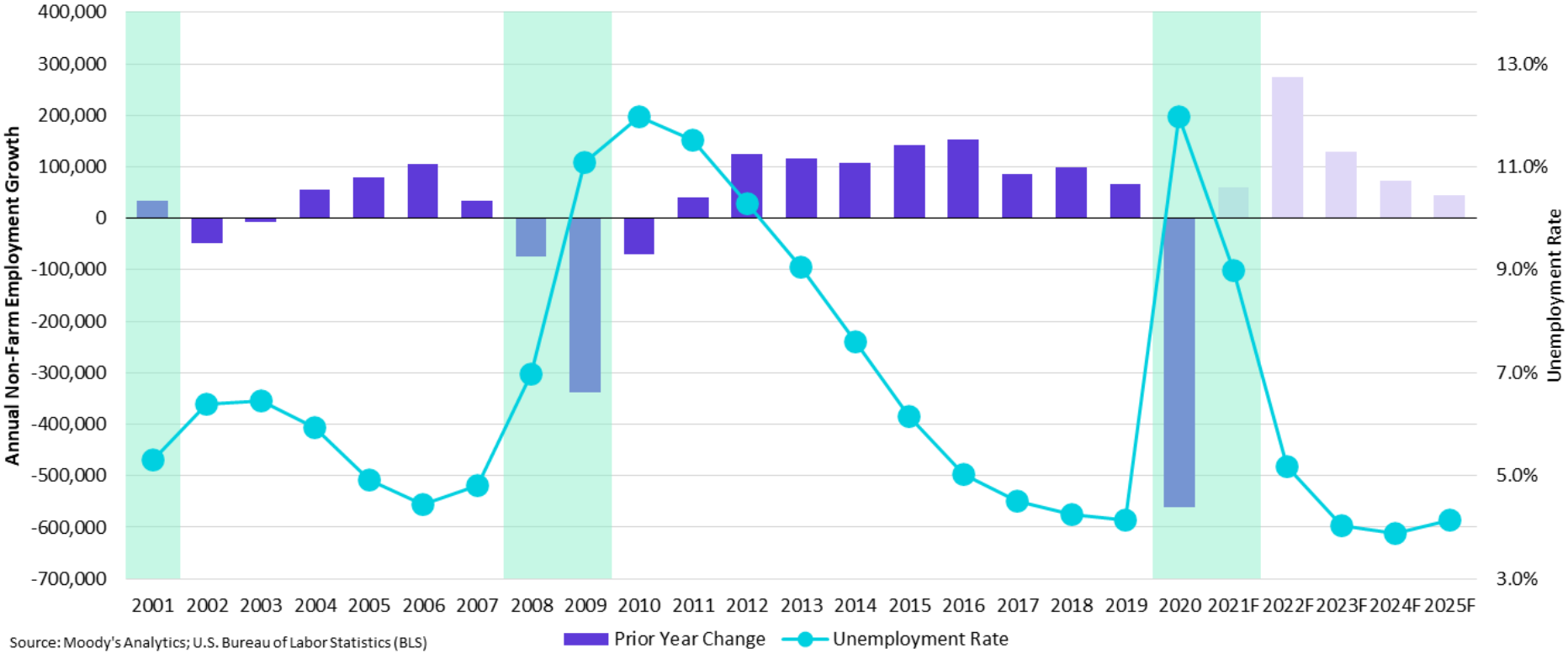
Economic & Demographic Overview

Zonda

The Subject Property is located within the Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area (large shaded area) and Los Angeles County (dark blue shaded area only). While both Los Angeles and Orange County encompass the MSA, most of the relevant population, employment and overall economic and housing market influence related to the Subject Property is concentrated in the County. There are a few metrics that are MSA only and in those instances, we will review the greater area. The following slides highlight current, historical and projected economic and demographic indicators that will impact the success of Ritter Ranch



After 561,717 job losses and a spiked unemployment rate in 2020, employment has started to recover in 2021 with added jobs and improving unemployment. Total employment could return to 2019 numbers of over 6.2 million sometime in the 2024 to 2025 range. Further, unemployment spiked to 9% last year (2020) but is forecasted here to get back to +/-5% sometime in 2022 (which may be aggressive given Los Angeles is a service-based economy, and a return to normal may take a little longer than the forecast suggests).

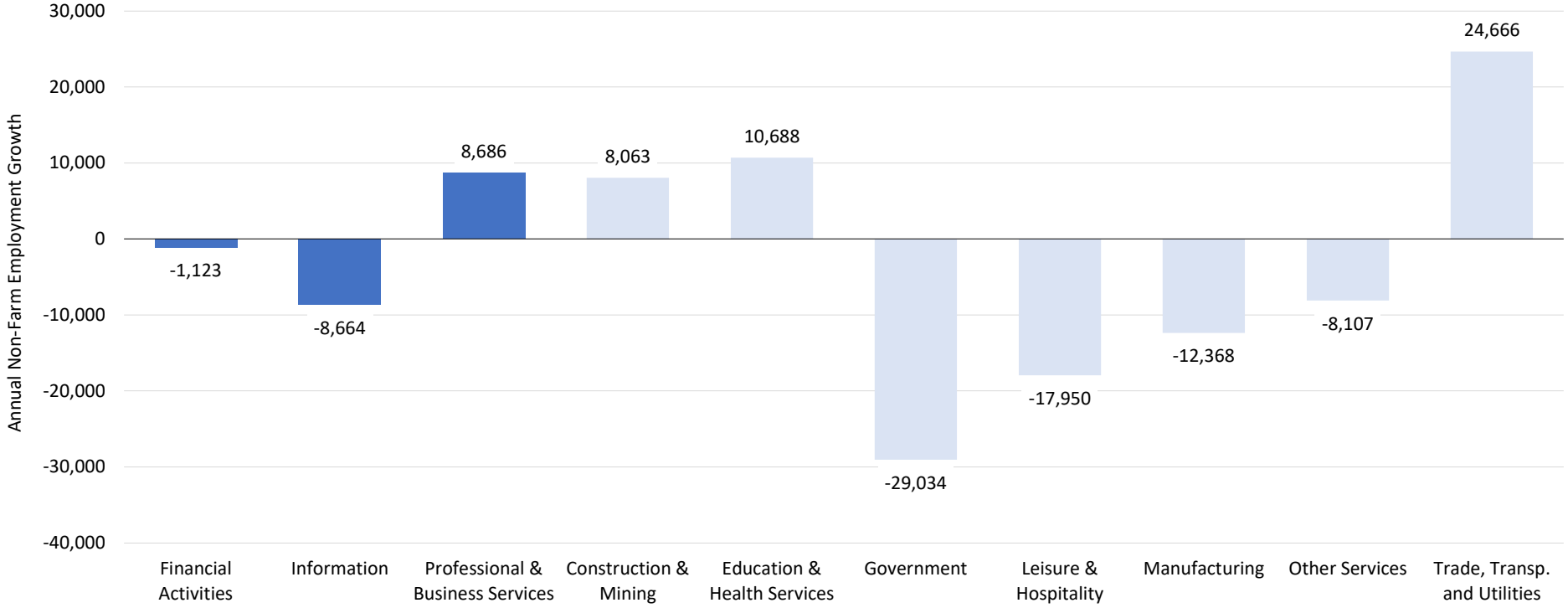


Source: Moody's Analytics; U.S. Bureau of Labor Statistics (BLS)

Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Non-Farm Employment	5,338,958	5,464,067	5,580,883	5,689,375	5,831,242	5,983,208	6,069,933	6,168,083	6,234,875	5,673,158	5,732,792	6,007,028	6,135,919	6,209,145	6,253,928
Prior Year Change	40,250	125,108	116,817	108,492	141,867	151,967	86,725	98,150	66,792	(561,717)	59,634	274,236	128,891	73,226	44,783
Annual % Change	0.8%	2.3%	2.1%	1.9%	2.5%	2.6%	1.4%	1.6%	1.1%	-9.0%	1.1%	4.8%	2.1%	1.2%	0.7%
Unemployment Rate	**11.5%**	**10.3%**	**9.0%**	**7.6%**	**6.2%**	**5.0%**	**4.5%**	**4.2%**	**4.1%**	**12.0%**	**9.0%**	**5.2%**	**4.0%**	**3.9%**	**4.1%**

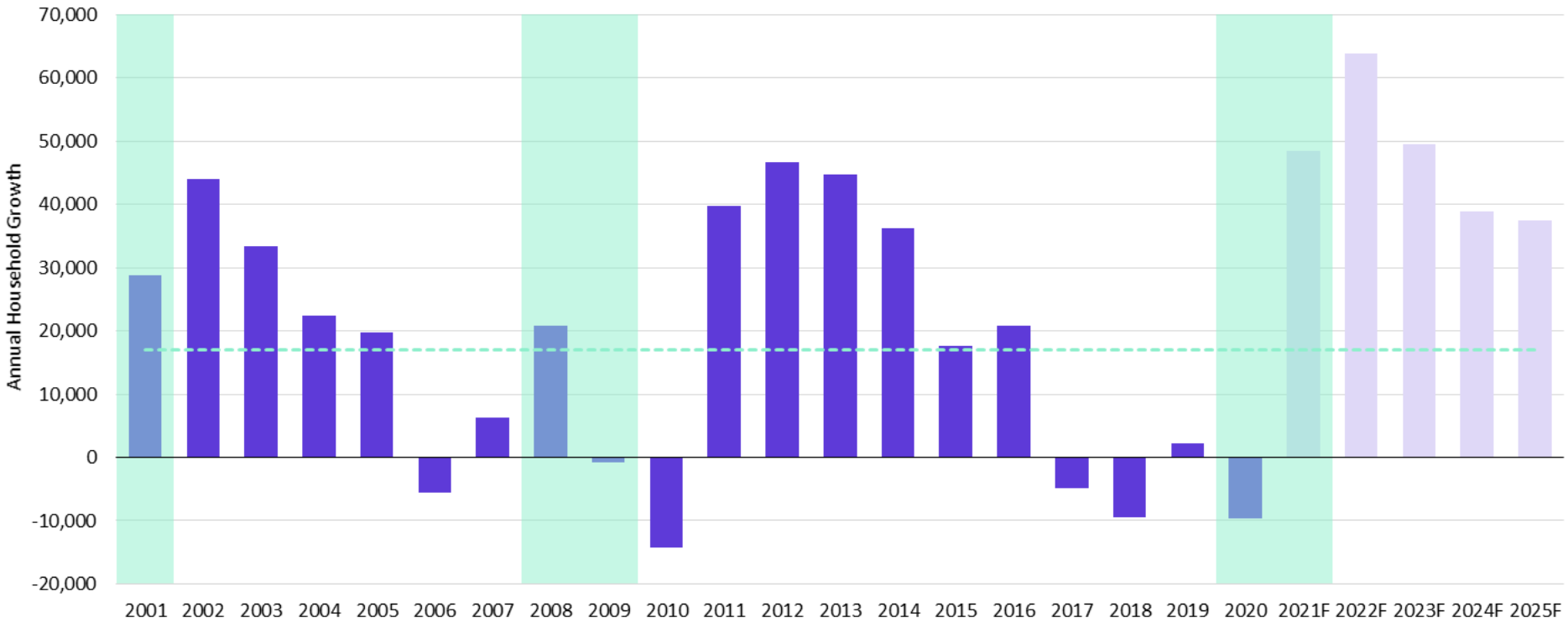
The pandemic year saw a sharp decline in Hospitality Services and losses in Government jobs, but rolling monthly averages appear to be quickly turning the corner with some recent growth in the higher-paying Professional & Business Services sector as well as the Trade, Construction and Education sectors. Signs of people returning to work combined with the undersupply in the immediate area are positive factors for the development of new homes MSA-wide and especially in a comparatively affordable area like Palmdale.



Source: Moody's Analytics; U.S. Bureau of Labor Statistics (BLS)

Category	Financial Activities	Information	Professional & Business Services	Construction & Mining	Education & Health Services	Government	Leisure & Hospitality	Manufacturing	Other Services	Trade, Transp. and Utilities
Current Month (Apr-2021)	326,238	202,551	908,889	254,522	1,055,207	697,009	544,077	452,695	164,547	1,050,484
Current Month (Apr-2020)	327,360	211,215	900,203	246,459	1,044,519	726,042	562,028	465,063	172,654	1,025,819
12-Month Change	**-1,123**	**-8,664**	**8,686**	**8,063**	**10,688**	**-29,034**	**-17,950**	**-12,368**	**-8,107**	**24,666**

Household growth in 2021 has rebounded notably from the loses during the Pandemic. An additional 48,000 households are expected to be formed across the Los Angeles MSA in 2021, which is the highest we have seen pre2001. Moody's Analytics projects another spike next year even outpacing 2021. While these projections might be aggressive, there will be notable household growth in an area with very little room to expand. This translates to continued demand for new housing and large master plans like Ritter Ranch.



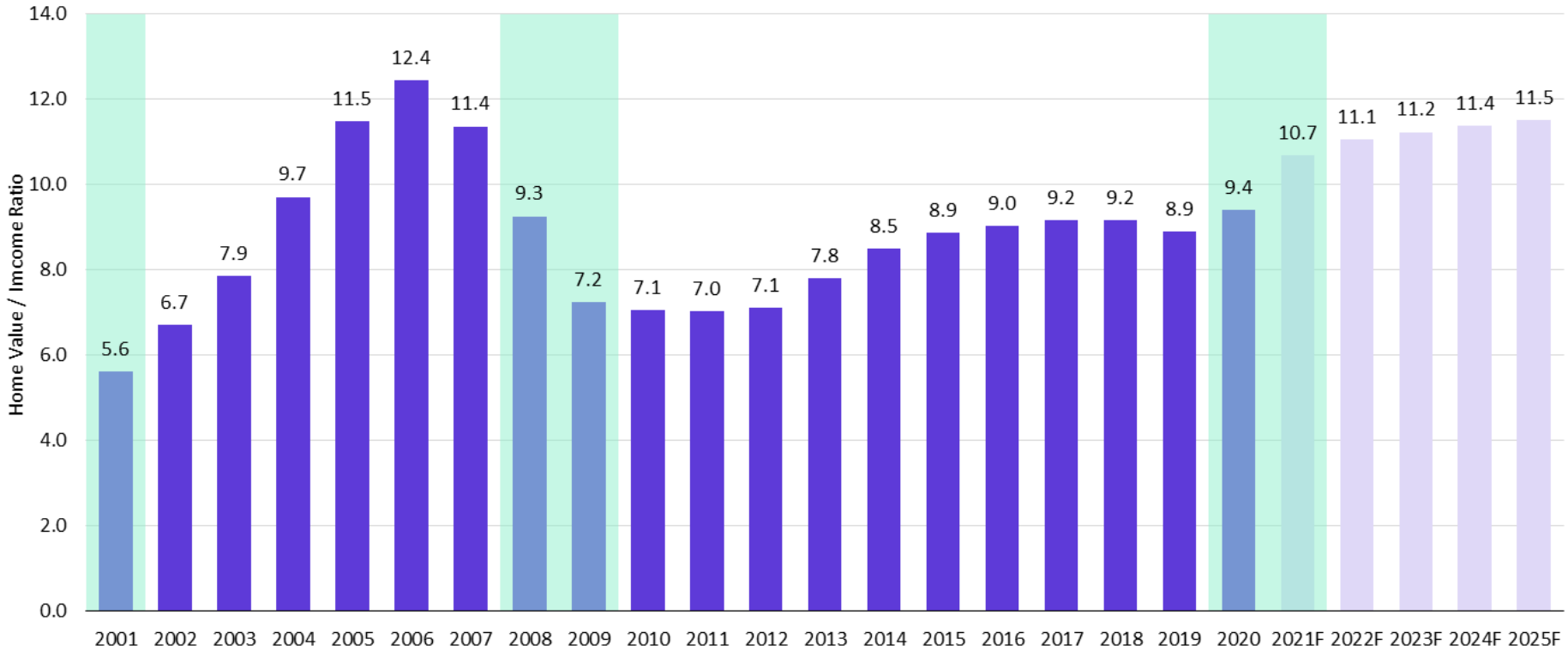
Source: Moody's Analytics; U.S. Census Bureau (BOC)

Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Total Households	4,281,278	4,327,995	4,372,648	4,408,785	4,426,358	4,447,241	4,442,457	4,432,938	4,435,230	4,425,627	4,474,064	4,537,931	4,587,339	4,626,231	4,663,670
Prior Year Change	39,711	46,717	44,653	36,137	17,573	20,882	(4,783)	(9,520)	2,292	(9,603)	48,437	63,867	49,408	38,892	37,439
Annual % Change	**0.9%**	**1.1%**	**1.0%**	**0.8%**	**0.4%**	**0.5%**	**-0.1%**	**-0.2%**	**0.1%**	**-0.2%**	**1.1%**	**1.4%**	**1.1%**	**0.8%**	**0.8%**

Zonda

Strong median incomes are outpaced by home prices at a rate of almost 10x. While median incomes in the MSA are considered strong compared to the greater Country, home prices for an existing single-family home are at a historical peak at a median home price of over $800,000. The ratio of income to existing home price in 2020 was 9.4, but Moody's projects this will climb to over 10.0 by year end 2021 with increases thereafter. Ritter Ranch will offer residents a much-needed living option that will be at a relative discount to unattainably priced homes in Santa Clarita, all while offering a far superior living experience to any existing community in Palmdale.



Source: Moody's Analytics; National Association of Realtors (NAR); U.S. Bureau of Labor Statistics (BLS)

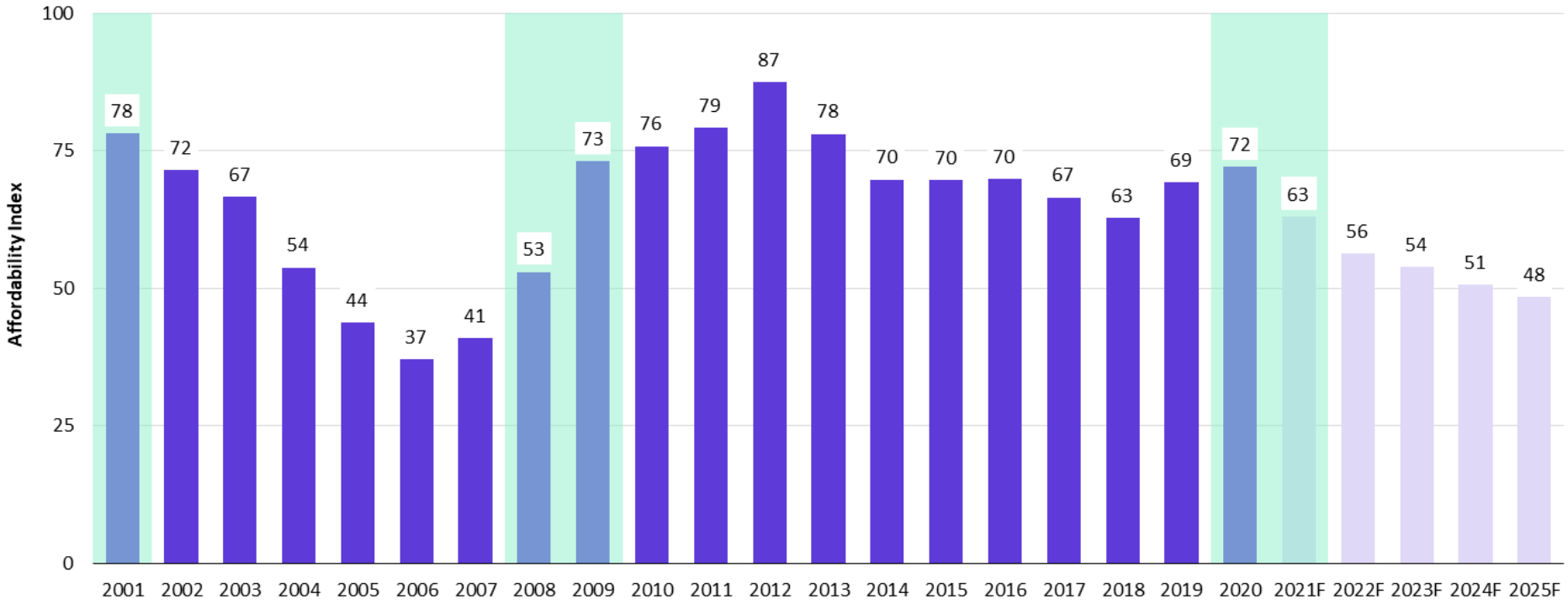
Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Median Existing SFD Sales Price	$399,629	$409,962	$459,554	$515,281	$559,256	$597,202	$637,509	$673,461	$691,812	$725,521	$833,114	$864,224	$908,262	$956,145	$1,001,906
Median Income - Nominal	$56,871	$57,598	$58,884	$60,642	$63,003	$66,163	$69,499	$73,443	$77,773	$77,166	$77,973	$78,143	$80,897	$83,977	$87,052
Home Value/Income Ratio	7.03	7.12	7.80	8.50	8.88	9.03	9.17	9.17	8.90	9.40	10.68	11.06	11.23	11.39	11.51

Housing Market Trends

Ritter Ranch Master Planned Community (Phase One)

The Affordability Index is expected to drop (i.e. become less affordable) over the next five years, implying higher priced homes in reaction to lower new home building activity and the current trend where existing home prices inch ever closer to new home prices. Affordability – or the typical household's ability to purchase the median-priced home – continues to move downward rapidly in response to vast home price appreciation in the market and limited options. Affordability is projected to continue decreasing through the foreseeable future. Offering reasonably priced product lines (especially compared to Santa Clarita (and the greater Los Angeles area) at Ritter Ranch should be met with market success.

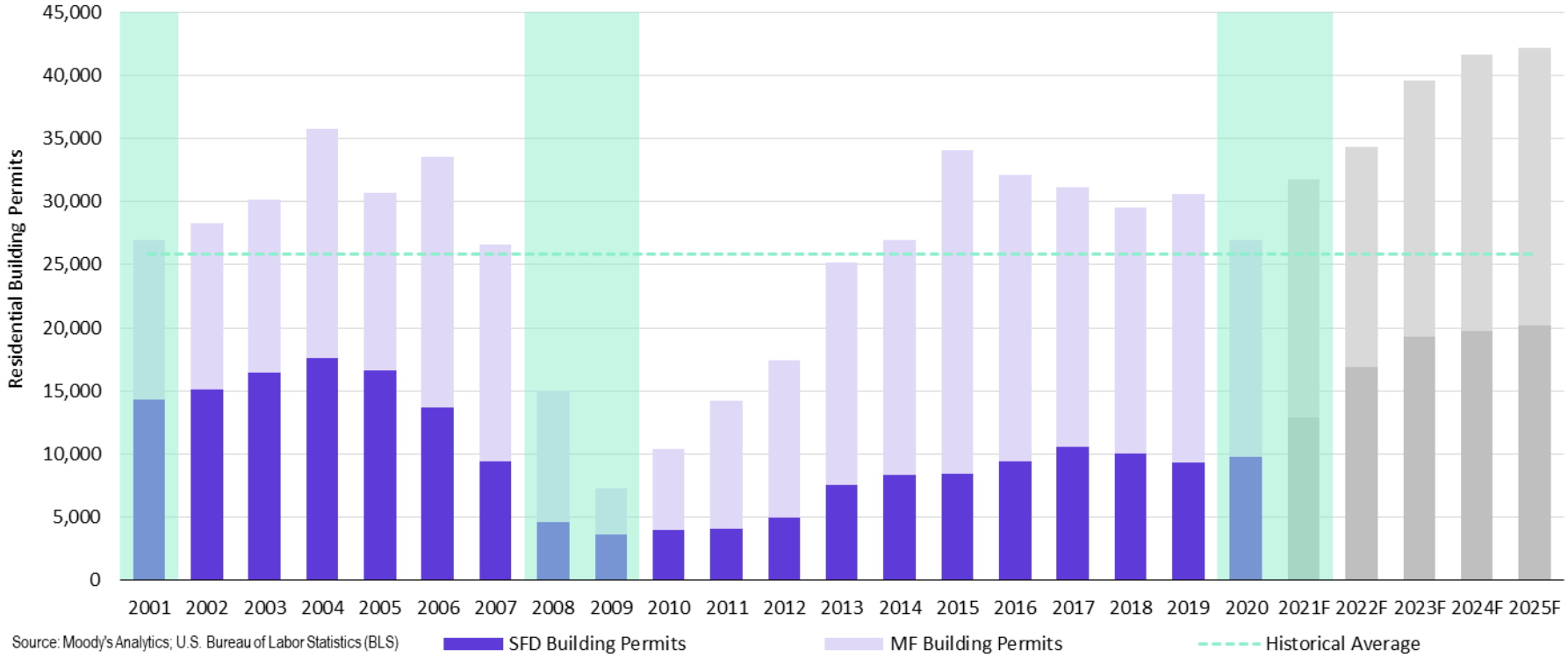


Source: Moody's Analytics; National Association of Realtors (NAR)

Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Affordability Index	79.2	87.5	78.1	69.8	69.7	69.8	66.5	62.8	69.3	72.1	63.0	56.4	53.9	50.6	48.4

Building permits in the MSA are expected to ramp up to higher levels than have been seen in the past 20 years. The area is expected to continue to trade single family permits for increasing shares of attached homes over the coming years in the quest for affordability and ever-tightening availability of developable land. Ritter Ranch will be able to offer notable MPC single family supply (and for sale multifamily) options to a supply constrained County and MSA.



Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

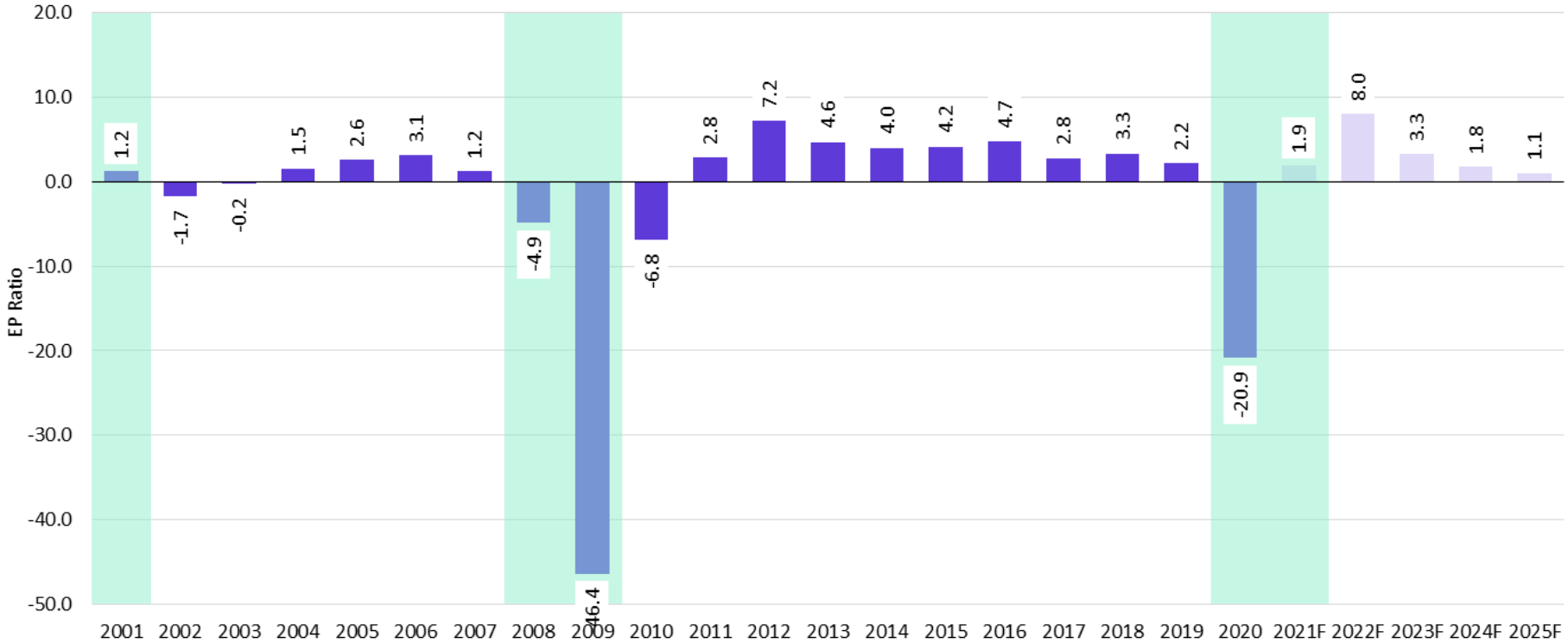
Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Total Building Permits	14,247	17,447	25,198	26,950	34,034	32,114	31,084	29,524	30,554	26,930	31,766	34,306	39,577	41,639	42,133
Annual % Change	37.1%	22.5%	44.4%	7.0%	26.3%	-5.6%	-3.2%	-5.0%	3.5%	-11.9%	18.0%	8.0%	15.4%	5.2%	1.2%
SFD Building Permits	4,097	4,946	7,509	8,300	8,447	9,379	10,587	10,042	9,306	9,737	12,923	16,862	19,256	19,779	20,179
Annual % Change	2.2%	20.7%	51.8%	10.5%	1.8%	11.0%	12.9%	-5.1%	-7.3%	4.6%	32.7%	30.5%	14.2%	2.7%	2.0%
MF Building Permits	10,150	12,501	17,689	18,650	25,587	22,735	20,497	19,482	21,248	17,193	18,843	17,444	20,321	21,860	21,954
Annual % Change	58.9%	23.2%	41.5%	5.4%	37.2%	-11.1%	-9.8%	-5.0%	9.1%	-19.1%	9.6%	-7.4%	16.5%	7.6%	0.4%

EMPLOYMENT TO PERMIT (E/P) RATIO

Housing Market Trends

Zonda

E/P Ratios in excess on 1.2 indicate a supply-constrained housing market with implied price growth, and naturally dipped very low in 2020. **Moody's Economy.com predicts a big jump in 2022 followed by a return closer to equilibrium in 2024 (1.6 is the 20-year historical average for this market).**

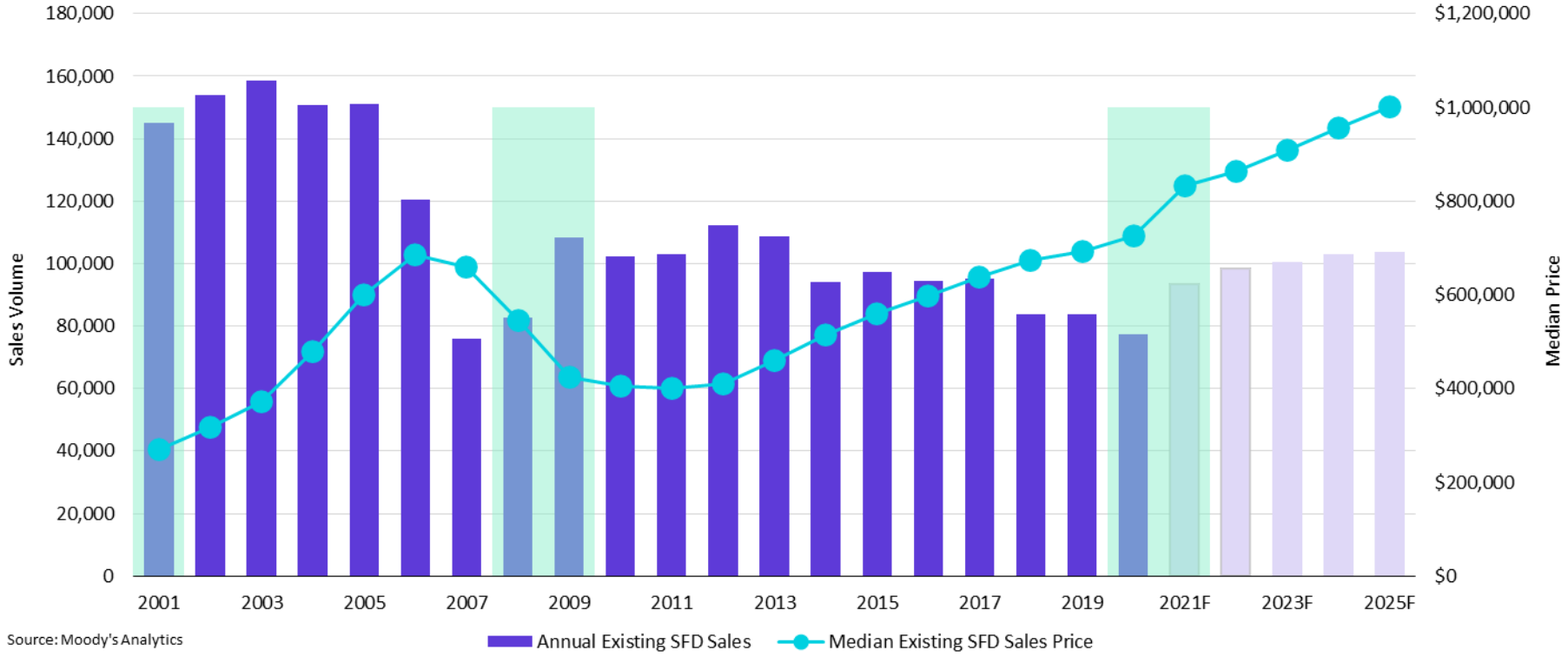


Source: Moody's Analytics; U.S. Bureau of Labor Statistics (BLS)

Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Non-Farm Employment	5,338,958	5,464,067	5,580,883	5,689,375	5,831,242	5,983,208	6,069,933	6,168,083	6,234,875	5,673,158	5,732,792	6,007,028	6,135,919	6,209,145	6,253,928
Prior Year Change	40,250	125,108	116,817	108,492	141,867	151,967	86,725	98,150	66,792	(561,717)	59,634	274,236	128,891	73,226	44,783
Building Permits	14,247	17,447	25,198	26,950	34,034	32,114	31,084	29,524	30,554	26,930	31,766	34,306	39,577	41,639	42,133
Employment/Housing	2.8	7.2	4.6	4.0	4.2	4.7	2.8	3.3	2.2	-20.9	1.9	8.0	3.3	1.8	1.1

Home prices are projected to continue their upward momentum. After home prices the Los Angeles MSA dropped considerably in 2008 and 2009, they increased each year 2012 to today with accelerated gains over the last year. Market-wide pricing for an existing home reached is currently over $800,000, and Moody's projects continued appreciation at an annual rate of 4% or more through 2025. At the same time, home sale activity has been up but expected to flatten in the coming years. The need for attainably priced homes in Los Angeles is at/near a historical high and Ritter Ranch will be able to offer affordable new home supply at a steep discount to the typical resale home.



Source: Moody's Analytics

Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area - Moody's Analytics Five-Year Forecast

Category	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F	2022F	2023F	2024F	2025F
Annual Existing SFD Sales	103,047	112,273	108,561	94,064	97,133	94,590	95,203	83,696	83,638	77,534	93,371	98,244	100,496	102,970	103,605
Annual % Change	0.8%	9.0%	-3.3%	-13.4%	3.3%	-2.6%	0.6%	-12.1%	-0.1%	-7.3%	20.4%	5.2%	2.3%	2.5%	0.6%
Median Existing SFD Sales Price	$399,629	$409,962	$459,554	$515,281	$559,256	$597,202	$637,509	$673,461	$691,812	$725,521	$833,114	$864,224	$908,262	$956,145	$1,001,906
Annual % Change	-1.2%	2.6%	12.1%	12.1%	8.5%	6.8%	6.7%	5.6%	2.7%	4.9%	14.8%	3.7%	5.1%	5.3%	4.8%

Appendix: Land Residual

Ritter Ranch Master Planned Community (Phase One)

Zonda

			Townhomes	
			Revenue	Cost/Unit
Revenues				
Net Base Price			$465,000	
Average Premium		1.0%	$4,650	
Average Sale Price (Base+Premium)			$469,650	
Total Units			386	
Total Gross Revenue (Lot by Lot):			**$181,284,900**	
Costs				
Average Unit Size (sq. ft.)			1,800	
Hard Construction Costs /1			$105	
Total Hard Costs	40.2%	of revenue	$72,954,000	$189,000
Soft Construction Costs				
Indirect Construction Costs /2	4.0%	of revenue	$7,251,396	$18,786
Sales & Marketing /3	5.0%	of revenue	$9,064,245	$23,483
General/Admin./Overhead /4	3.0%	of revenue	$5,438,547	$14,090
Warranty /5	1.0%	of revenue	$1,812,849	$4,697
Financing /6	4.0%	of revenue	$7,251,396	$18,786
Builder Profit	12.0%	of revenue	$21,754,188	$56,358
Other/Expenses/Contingency /7	1.5%	of revenue	$2,719,274	$7,045
Total Costs:			**$128,245,895**	**$332,243.25**

Finished Lot Prices

Fully Finished Land Price	$53,039,006
Finished Land Price Per Lot	$137,407
Land as Percentage of Base + Premium Home Price:	**29.3%**

The above values reflect fully finished land prices. Lots that are unimproved, or "paper lots" are priced at a discount to reflect additional costs related to site development. The cost to complete can range depending on topography and associated development and engineering costs.

Assumptions:

1/ Includes side and rear block walls, front yard landscaping, and on-site labor. Impact fees are not included in the finished lot value.
2/ Indirect construction costs include building permits, architecture fees, legal fees, market study, construction supervision, construction trailer, on-site utilities, etc.
3/ Includes sales salaries, commissions & benefits, advertising, merchandising & landscape fees for models. Even breakdown = broker co-op, sales, models, advertising, sales staff.
4/ Includes general office expenses and liability insurance.
5/ Warranty has been estimated at 1.0%.
6/ Estimated using industry average.
7/ Miscellaneous (Legal, HOA, design, etc.)

Zonda

			SFD 5,000 SF Lots	
			Revenue	Cost/Unit
Revenues				
Net Base Price			$566,250	
Average Premium		3.0%	$16,988	
Average Sale Price (Base+Premium)			$583,238	
Total Units			400	
Total Gross Revenue (Lot by Lot):			**$233,295,000**	
Costs				
Average Unit Size (sq. ft.)			2,450	
Hard Construction Costs /1			$95	
Total Hard Costs	39.9%	of revenue	$93,100,000	$232,750
Soft Construction Costs				
Indirect Construction Costs /2	4.0%	of revenue	$9,331,800	$23,330
Sales & Marketing /3	5.0%	of revenue	$11,664,750	$29,162
General/Admin./Overhead /4	3.0%	of revenue	$6,998,850	$17,497
Warranty /5	1.0%	of revenue	$2,332,950	$5,832
Financing /6	4.0%	of revenue	$9,331,800	$23,330
Builder Profit	8.0%	of revenue	$18,663,600	$46,659
Other/Expenses/Contingency /7	1.5%	of revenue	$3,499,425	$8,749
Total Costs:			**$154,923,175**	**$387,307.94**

Finished Lot Prices

Fully Finished Land Price	$78,371,825
Finished Land Price Per Lot	$195,930
Land as Percentage of Base + Premium Home Price:	**33.6%**

The above values reflect fully finished land prices. Lots that are unimproved, or "paper lots" are priced at a discount to reflect additional costs related to site development. The cost to complete can range depending on topography and associated development and engineering costs.

Assumptions:

1/ Includes side and rear block walls, front yard landscaping, and on-site labor. Impact fees are not included in the finished lot value.

2/ Indirect construction costs include building permits, architecture fees, legal fees, market study, construction supervision, construction trailer, on-site utilities, etc.

3/ Includes sales salaries, commissions & benefits, advertising, merchandising & landscape fees for models. Even breakdown = broker co-op, sales, models, advertising, sales staff.

4/ Includes general office expenses and liability insurance.

5/ Warranty has been estimated at 1.0%.

6/ Estimated using industry average.

7/ Miscellaneous (Legal, HOA, design, etc.)

Zonda

			SFD 5,500 SF Lots Revenue	SFD 5,500 SF Lots Cost/Unit
Revenues				
Net Base Price			$612,500	
Average Premium		3.0%	$18,375	
Average Sale Price (Base+Premium)			$630,875	
Total Units			184	
Total Gross Revenue (Lot by Lot):			**$116,081,000**	
Costs				
Average Unit Size (sq. ft.)			2,700	
Hard Construction Costs /1			$95	
Total Hard Costs	40.7%	of revenue	$47,196,000	$256,500
Soft Construction Costs				
Indirect Construction Costs /2	4.0%	of revenue	$4,643,240	$25,235
Sales & Marketing /3	5.0%	of revenue	$5,804,050	$31,544
General/Admin./Overhead /4	3.0%	of revenue	$3,482,430	$18,926
Warranty /5	1.0%	of revenue	$1,160,810	$6,309
Financing /6	4.0%	of revenue	$4,643,240	$25,235
Builder Profit	8.0%	of revenue	$9,286,480	$50,470
Other/Expenses/Contingency /7	1.5%	of revenue	$1,741,215	$9,463
Total Costs:			**$77,957,465**	**$423,681.88**

Finished Lot Prices

Fully Finished Land Price	$38,123,535
Finished Land Price Per Lot	$207,193
Land as Percentage of Base + Premium Home Price:	**32.8%**

The above values reflect fully finished land prices. Lots that are unimproved, or "paper lots" are priced at a discount to reflect additional costs related to site development. The cost to complete can range depending on topography and associated development and engineering costs.

Assumptions:

1/ Includes side and rear block walls, front yard landscaping, and on-site labor. Impact fees are not included in the finished lot value.

2/ Indirect construction costs include building permits, architecture fees, legal fees, market study, construction supervision, construction trailer, on-site utilities, etc.

3/ Includes sales salaries, commissions & benefits, advertising, merchandising & landscape fees for models. Even breakdown = broker co-op, sales, models, advertising, sales staff.

4/ Includes general office expenses and liability insurance.

5/ Warranty has been estimated at 1.0%.

6/ Estimated using industry average.

7/ Miscellaneous (Legal, HOA, design, etc.)

Zonda

			SFD 6,000 SF Lots	
			Revenue	Cost/Unit
Revenues				
Net Base Price			$675,000	
Average Premium		3.0%	$20,250	
Average Sale Price (Base+Premium)			$695,250	
Total Units			126	
Total Gross Revenue (Lot by Lot):			**$87,601,500**	
Costs				
Average Unit Size (sq. ft.)			3,100	
Hard Construction Costs /1			$95	
Total Hard Costs	42.4%	of revenue	$37,107,000	$294,500
Soft Construction Costs				
Indirect Construction Costs /2	4.0%	of revenue	$3,504,060	$27,810
Sales & Marketing /3	5.0%	of revenue	$4,380,075	$34,763
General/Admin./Overhead /4	3.0%	of revenue	$2,628,045	$20,858
Warranty /5	1.0%	of revenue	$876,015	$6,953
Financing /6	4.0%	of revenue	$3,504,060	$27,810
Builder Profit	8.0%	of revenue	$7,008,120	$55,620
Other/Expenses/Contingency /7	1.5%	of revenue	$1,314,023	$10,429
Total Costs:			**$60,321,398**	**$478,741.25**

Finished Lot Prices

Fully Finished Land Price	$27,280,103
Finished Land Price Per Lot	$216,509
Land as Percentage of Base + Premium Home Price:	**31.1%**

The above values reflect fully finished land prices. Lots that are unimproved, or "paper lots" are priced at a discount to reflect additional costs related to site development. The cost to complete can range depending on topography and associated development and engineering costs.

Assumptions:

1/ Includes side and rear block walls, front yard landscaping, and on-site labor. Impact fees are not included in the finished lot value.

2/ Indirect construction costs include building permits, architecture fees, legal fees, market study, construction supervision, construction trailer, on-site utilities, etc.

3/ Includes sales salaries, commissions & benefits, advertising, merchandising & landscape fees for models. Even breakdown = broker co-op, sales, models, advertising, sales staff.

4/ Includes general office expenses and liability insurance.

5/ Warranty has been estimated at 1.0%.

6/ Estimated using industry average.

7/ Miscellaneous (Legal, HOA, design, etc.)

Zonda

			SFD 7,000 SF Lots	
			Revenue	Cost/Unit
Revenues				
Net Base Price			$740,000	
Average Premium		3.0%	$22,200	
Average Sale Price (Base+Premium)			$762,200	
Total Units			84	
Total Gross Revenue (Lot by Lot):			**$64,024,800**	
Costs				
Average Unit Size (sq. ft.)			3,400	
Hard Construction Costs /1			$95	
Total Hard Costs	42.4%	of revenue	$27,132,000	$323,000
Soft Construction Costs				
Indirect Construction Costs /2	4.0%	of revenue	$2,560,992	$30,488
Sales & Marketing /3	5.0%	of revenue	$3,201,240	$38,110
General/Admin./Overhead /4	3.0%	of revenue	$1,920,744	$22,866
Warranty /5	1.0%	of revenue	$640,248	$7,622
Financing /6	4.0%	of revenue	$2,560,992	$30,488
Builder Profit	8.0%	of revenue	$5,121,984	$60,976
Other/Expenses/Contingency /7	1.5%	of revenue	$960,372	$11,433
Total Costs:			**$44,098,572**	**$524,983.00**

Finished Lot Prices

Fully Finished Land Price	$19,926,228
Finished Land Price Per Lot	$237,217
Land as Percentage of Base + Premium Home Price:	**31.1%**

The above values reflect fully finished land prices. Lots that are unimproved, or "paper lots" are priced at a discount to reflect additional costs related to site development. The cost to complete can range depending on topography and associated development and engineering costs.

Assumptions:

1/ Includes side and rear block walls, front yard landscaping, and on-site labor. Impact fees are not included in the finished lot value.

2/ Indirect construction costs include building permits, architecture fees, legal fees, market study, construction supervision, construction trailer, on-site utilities, etc.

3/ Includes sales salaries, commissions & benefits, advertising, merchandising & landscape fees for models. Even breakdown = broker co-op, sales, models, advertising, sales staff.

4/ Includes general office expenses and liability insurance.

5/ Warranty has been estimated at 1.0%.

6/ Estimated using industry average.

7/ Miscellaneous (Legal, HOA, design, etc.)

APPENDIX

Company Experience

Zonda, is a nation-wide research firm guiding real estate investors throughout the country. Our highly educated and experienced consulting staff believes in providing the highest quality service possible to our clients, which means completing the exact analysis they need. We are home to over 140 experts in 10 offices across the country.

Our company offers a unique research tool known as Zonda that offers an edge to our research with easy access real-time data at a local level across the United States. Our local Zonda database provides our team with a history of new and resale housing information, maps, comprehensive data, and many other metrics we use in our analyses to begin the reporting process with greater accuracy -- quickly, accurately and cost-effectively -- with on the ground and in person research. Zonda provides access to over 275 metrics influencing the housing industry including monthly and annual historical trends, future projections and real-time narrative reported by seasoned analysts across the country.

Our senior executive team are thought leaders that individually have more than 30 years of experience in housing and real estate research. With our advisory services, we have navigated builders through different housing cycles and have a deep understanding of local markets. Our consulting team has a broad range of housing expertise and experience spanning the country including consumer research, feasibility studies, portfolio valuation, business planning, and custom research designed to make better decisions related to any real estate investment.

Zonda

Zonda and Our Research

- Competitive Analysis throughout the Country
- Exclusive Access to our Research & Consulting Executives
- Metro Analysis & Housing Trends
- Apartment Analysis & Forecast
- Exclusive Client Events
- Presentations & Webinars
- Proprietary Surveys

Advisory

- For-Sale, Apartment, Commercial & Mixed Use
- Resort & International Development
- Strategic Direction & Planning
- Home Builder Operations Assessment
- Demand Analysis
- Consumer Research & Focus Groups
- Custom Economic Analysis & Forecasting
- Litigation Support & Expert Witness
- Financial Modeling
- Project & Product Positioning

Consumer and Product Strategy

- Consumer and Product Insights
- Tactical and Marketing Strategies
- Product Design Advisory
- Custom Consumer Research
- Customer Shop Research

Thank you!

This analysis was prepared by Zonda.

QUALIFICATIONS

THE DORÉ GROUP
INTERNATIONAL REAL ESTATE CONSULTATION AND FORENSIC VALUATION

LANCE W. DORÉ, MAI, FRICS

Lance W. Doré is the President and CEO of The Doré Group. In this role, he directs all valuation assignments involving a wide variety of conventional and complex real properties, serves as litigation support to both public and private clients, provides expert advisory services (including forensic analyses and market and feasibility studies), and manages the overall operations of The Doré Group.

Mr. Doré has been a real estate appraiser since 1983, initially working for Bank of America as a staff appraiser then as a senior appraiser with a fee appraisal firm in Del Mar, California. In 1988, he formed L.W. Doré, Real Estate Consultants and grew the firm through the addition of two partners forming Doré & Curry, Inc. (1990) and Doré, Curry, & Marschall, Inc. (1997). In 1999, Doré, Curry, & Marschall, Inc. became the San Diego office for Integra Realty Resources with Mr. Doré serving as Managing Director. In the fall of 2005, Mr. Doré joined Cushman & Wakefield as the National Practice Leader of the Government Affairs and Energy division. In 2007, he pursued an opportunity to serve as the President of European Emerging Markets and Vice President of Client Services for PGP, Inc./Colliers International. Mr. Doré's unique depth of experience, coupled with his high personal standards of service, led him to found The Doré Group in 2010.

Experience

Mr. Doré's work experience spans a wide variety of property types with special expertise in the valuation of energy facilities, conservation land, open space corridors and ranches. In addition, he has also appraised planned-unit developments, residential income properties, senior housing, shopping centers, office, industrial, mixed-use properties, and a multitude of special purpose properties, including, but not limited to hotels, ski resorts, restaurants, hospitals, recreational camps, auto service and wrecking centers, equestrian facilities, and golf courses. He regularly serves as an expert advisor conducting appraisal reviews, forensic studies, and marketability and feasibility analyses. In addition, Mr. Doré is uniquely qualified and experienced in litigation testimony, consultation and advisory services for all real estate related issues. His geographical valuation expertise is focused in the western United States and extends to Tokyo (Japan), Central America, Mexico, Cyprus, and Moscow (Russia).

Licenses/Certifications/ Affiliations

Certified General Real Estate Appraiser – **State of California** (OREA No. AG002464)
California Licensed Real Estate Broker & Realtor member - **San Diego Board of Realtors**
Credentialed Mediator – **National Conflict Resolution Center**
Member of the Appraisal Institute **(MAI No. 8471)**
Fellow of the Royal Institute of Charter Surveyors **(FRICS Designation)**
Registered Valuer - **Royal Institute of Charter Surveyors** for international valuation
Member of the International Right of Way Association **(IR/WA)**
Member of the Family Firm Institute – **FFI**
Member of the Lambda Alpha International – Land Economic Society – **LAI**

Instructor Positions

National Instructor (*Real Estate Valuation Principles & Practice)* - **Appraisal Institute**
Adjunct Professor - **Russian Federation Finance Academy**
National Instructor – (*Business Development and Leadership*) – **Royal Institute of Charter Surveyors**
National Instructor - (Red Book Standards) - **Royal Institute of Charter Surveyors**
National Instructor - (Hotel Valuation) - **Royal Institute of Charter Surveyors**
National Instructor - (International Valuation and Property Measurement Standards) - **Royal Institute of Charter Surveyors**
National Instructor - (Subdivision Development) - **Royal Institute of Charter Surveyors**
National Instructor - (Automated Valuation Models) - **Royal Institute of Charter Surveyors**
National Instructor - (Bridging the Gap of IVSC v. USPAP) - **Royal Institute of Charter Surveyors**

Leadership/Committees

Past President – **Appraisal Institute**, San Diego Chapter
Past member of *International Relations Committee* – **Appraisal Institute**
Past member of *Ethics & Standards Committee* – **Appraisal Institute**

Speaking Engagements

Appraisal Institute (National Seminar Series, Los Angeles, CA) - Land Valuation & Environmental Issues
The Trust for Public Land (San Diego, CA) - Natural Communities Conservation Plan
Pan Pacific Conference (Auckland, New Zealand) – Valuation of Submerged Lands
Government of Cyprus (Nicosia, Cyprus) – Valuation of Golf Courses and Marinas
The Russian Federation (Moscow, Russia) - Valuation of Land and Appraisal Principles
The Russian Federation (Goa, India) - Valuation of Oil and Gas and Power Plants
Royal Institute of Charter Surveyors (Montego Bay, Jamaica) – Government & Regulatory Risk
Graziadio School of Business & Management, Pepperdine (Los Angeles, CA)–2008 US & California Forecast
Appraisal Institute (San Diego, CA) – Unique Valuations in Real Estate
Appraisal Institute (San Diego, CA) – International Financial Reporting Standards (IFRS)
California Redevelopment Agency (Workshop Series, CA) – Real Estate Valuation for AB1X 26 & AB1484
Risk Management Association (RMA) – Appraisal Risk and the Valuation Process
University of San Diego – MBA program – Guest Lecturer
University of San Francisco – Geller Family Business Center – Family Office Valuation
NAI Global Conference – Real Estate Investment Pyramid

Publications

Appraisal Journal (October 2001) – "The Valuation of Submerged Land"
Energy Pulse *(March 2006)* – **"**The Highest and Best Use of Power Plants"
Union of Pan America Valuers *(November 2010)* – "Impact of Public to Private Partnerships in BRICS"
Wall Street Journal *(August 2001)* – "Power Plant Owners Fight to Lower Taxes"
The Secret of Real Estate – Revealed (2011)
IRWA Right of Way (*July/August 2018)* – "Conservation Easements – Unraveling the Mystery"

Representative Client List

Public Entities

United States Department of the Interior
United States Department of Navy
Government of Cyprus
State of California – Judicial Courts
State of California – Auditor
County of Riverside
County of Monterey
City of San Diego
Los Angeles Dept. of Water and Power
City of Monterey
United States Forest Service
United States Department of Justice
Russian Federation
County of San Diego
County of San Bernardino
County of Los Angeles
City of Riverside
Port of Long Beach
Port of Oakland
Port of Vancouver

Legal Clients – Local, Regional, National and International Firms. Criminal, Transactional and Civil Litigation. Qualified Expert in Federal Bankruptcy Court, United States Judicial District Court, California Superior Court, San Diego Superior Court, Los Angeles Superior Court, Washington State Superior Court.

Financial Institutions – All Major Local, Regional and National Organizations. Savings and Loans, Banks, Insurance Companies, Investment Firms, Brokerage Firms and Insurance Companies.

Non-Profit Conservation Groups – Local, Regional and National Organizations.

Family Offices – Estate Planning, Tax Planning, Consultation

City Council Staff Report

DATE: **NOVEMBER 15, 2023**

TO: **HONORABLE MAYOR AND CITY COUNCIL**

FROM: **PUBLIC WORKS**

DISTRICT: **ALL**

SUBJECT: **APPROVE EXECUTION OF AGREEMENTS RELATED TO THE PALMDALE SOLAR AND BATTERY RESIDENTIAL PROGRAM**

ISSUE

Approve execution of agreements related to the Palmdale Solar and Battery Residential Program.

RECOMMENDATION

Staff recommends the City Council grant the City Manager, or her designee, the authority to execute all agreements; Agreement No. A-8536, A-8537, A-8538, A-8539, and A-8216, including non-substantive changes related to the Palmdale Power Choice Solar Battery and Residential Program.

BACKGROUND

The City's CCA Program, Energy for Palmdale's Independent Choice (EPIC), was established by the City Council through the adoption of Resolution No. CC 2018-087, which approved the submittal of an Implementation Plan (Plan), per Public Utilities Code Section 366.2(c), on December 4, 2018. The Plan was certified by the Energy Division on February 28, 2019, and EPIC successfully began serving customers on October 1, 2022.

In addition to providing renewable energy at competitive prices to our customers, EPIC intends to offer customers programs to not only support the renewable energy goals of the state by leveraging innovation and cutting-edge technologies but also to enhance grid stability and create new meaningful benefits for our residents. The actions before the City Council are in support of this effort.

DISCUSSION

The Power Choice Solar and Battery Residential Program was developed by CalChoice member, Participate Energy, and Tesla to support new home developers in meeting their Title 24 requirements. It also provides homeowners with a zero up-front cost option to install solar and batteries for energy savings, backup power, and potentially participating in grid services. This program was successfully launched in October 2022, and as a CalChoice member, Palmdale has an opportunity to implement this program in our community based on the established program agreements.

The Framework Agreement related to the program provides details on the agreement structure between the City, Participate Energy, and Tesla and lays out the responsibilities of each party. Homeowners and Developers will order systems from Tesla, which will design, permit, and install solar and batteries on new residential developments and existing residential homes. Participate Energy will finance the program and own the solar and battery systems. Participate Energy will also contract with Tesla to provide ongoing operations and maintenance throughout the twenty-five-year duration of their agreement. EPIC will assist with marketing the program to developers and existing residents. EPIC will also enter into the Master Power Purchase Agreement (PPA) with Participate Energy to purchase the energy created from the behind-the-meter solar and battery systems, while, in parallel, selling energy and battery services to the homeowners as part of the City and CCA retail offer. The CCA Customer Agreement with EPIC customers is proposed at $0.145 per kWh with a 1.9% annual escalator for solar and $115.00 per month for each battery. Customers can acquire additional Powerwalls for $75.00 per month. The proposed PPA rate from Participate Energy to the City is $0.145 per kWh with a 1.9% escalator.

Developers and homeowners interested in participating in the program will find program information on EPIC's website and will add basic home information to a fillable form on the site. Once the form is completed, information will be sent directly to Tesla, who will follow up with the customer. Tesla will also enable ordering directly from the Tesla.com website. Tesla will be responsible for all installation-related work, including permitting systems with the City.

EPIC will earn revenues in two forms. First, a $0.40 per watt up-front fee for each system developed and deployed through the program, equating to approximately $3,000,000 for every 1,000 homes deployed with a standard 7,600 watt and on (1) Powerwall configuration. The city will also receive a program support service fee of $0.02 per kWh generated and $15.00 per month for each Powerwall installed, which equates to an estimated $21,000,000 over the life of the program for every 1000 residential customers.

Homeowners and Developers who participate in the program will enjoy many benefits. These include easy access to solar financing and installation, comprehensive integration with their existing CCA service, access to backup power in the event of an emergency or Public Safety Power Shutoff, and substantial savings on their electric bills. One of the unique benefits of this structure is that all residents qualify; there is no consumer credit check. Often, these programs are only available to those with the best credit scores. This program will allow all residents access to energy savings and resiliency. In addition, a significant portion of their expenditures will remain local and be reinvested in our community.

FISCAL IMPACT

EPIC will, in connection with the required development services, be paid a fee during the construction phase of $0.40 per watt developed. Additionally, EPIC will receive a nominal operating service fee of $0.02 per kilowatt-hour (kWh) generated and $15.00 per month for each Powerwall installed over the program's life, an estimated $21,000,000 over the next 25 years.

STRATEGIC PLAN

Goal II: Ensure the long-term health of the City and maintain funding for services.

A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health

Goal III: Invest in infrastructure to improve community livability.

A. Seek innovative, cost-effective, customer-focused methods of service delivery
B. Implement and administer environmentally sustainable programs

Goal IV: Ensure the long-term health of the City and maintain funding for services.

B. Provide inclusive access to a variety of supportive services that build a resilient and healthy community

Prepared by:	Lynn Glidden, P.E., Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, City Attorney

ATTACHMENTS

1. Framework Agreement No. A-8536
2. Master Power Purchase Agreement No. A-8537
3. Program Management Agreement No. A-8538
4. Program Support Service Fee Agreement No. A-8539
5. Multiparty Non-Disclosure Agreement No. A-8216

Framework CalChoice Distributed Energy Resource Program Agreement

This Framework CalChoice Distributed Energy Resource Program Agreement (this "Agreement") is entered into as of [February 1, 2023] (the "Effective Date"), among the parties listed below (each, a "Party" and together the "Parties"). This Agreement comprises (i) the Key Terms set out below (the "Key Terms"), and (ii) all schedules referenced in the "Attachments" section of the Key Terms.

Key Terms	
This Agreement sets out the terms and conditions on which the California Choice Energy Authority ("CalChoice") and the City of Palmdale ("Member") shall market and offer a program for the deployment of traditional solar PV systems and Powerwalls ("System") to certain residential customers ("Customers") and new homes builders ("Builders") located in the Member territory, with sales and educational support provided by Member, product and product installation support provided by Tesla, purchase and operation of System by Participate Energy Fund, LLC ("The Program Fund") for the sale of energy from the Systems to Member for resale to Customers (the "Program").	
Parties:	
Tesla:	Tesla, Inc., a corporation organized under the laws of Delaware.
CalChoice:	California Choice Clean Energy Authority, a California Joint Powers Authority.
Member:	City of Palmdale, a California municipal corporation.
The Program Fund:	Participate Energy Fund, LLC
Framework Agreement Term:	
Term:	The period commencing on the Effective Date and ending on the second (2nd) anniversary of the Effective Date (the "Term"), which shall automatically be extended for additional, one-year periods upon the expiration of the then-current Term unless terminated early in accordance with this Agreement.
Notices:	
Tesla Notice Address:	1 Tesla Road, Austin, TX 78725, USA. Attn: Energy Notices / Legal Department Phone: +1. 512.516.8177. Email: energynotices@tesla.com.
Tesla Address for submission of Purchase Orders:	www.tesla.com
CalChoice Notice Address:	44933 Fern Avenue, Lancaster, CA 93534. Attn: Jason Caudle, City Manager Phone: 661.723.6110 jcaudle@cityoflancasterca.org
Member Notice Address:	38300 Sierra Highway, Palmdale, CA 93550 Attn: Ronda Perez, City Manager rperez@cityofpalmdale.org

Program Fund Notice Address:	Participate.Energy, LLC Attn: Ethan Friedman c/o Virtual Post Solutions, Inc. 2093 Philadelphia Pike #3125 Claymont, DE 19703 ethan@participate.energy
NDA:	
NDAs:	The non-disclosure agreement dated [MMM DD, YYYY] between Tesla, The Program Fund and Member.
Attachments:	
The attachments below are incorporated by reference into this Agreement. In the event of any conflict, the order of precedence shall be (i) these Key Terms and (ii) the Schedules, in order of appearance.	
Schedule 1:	Program Terms and Conditions
Schedule 2:	Pricing
Attachment A:	Form of Customer Agreement
Attachment B:	Form of New Homes Builder Framework Agreement
Attachment C:	Form of Customer Order – Program Terms

EXECUTED by the Parties on the Effective Date.

CALIFORNIA CHOICE CLEAN ENERGY AUTHORITY (SIGNATURE) (PRINT NAME) (PRINT TITLE)	CITY OF PALMDALE (SIGNATURE) (PRINT NAME) (PRINT TITLE)
TESLA, INC. (SIGNATURE) (PRINT NAME) (PRINT TITLE)	PARTICIPATE ENERGY FUND, LLC (SIGNATURE) (PRINT NAME) (PRINT TITLE)

Schedule 1
Program Terms and Conditions

1. The Program. The objective of the Program is to deploy eligible Systems with a target of 500 MW of direct current capacity throughout the territorial boundaries of Member and the Community Choice Aggregation ("CCA") service territories managed by Member or its CCA partners, including, but not limited to, the cities of: San Jacinto, Pico Rivera, Rancho Mirage, Apple Valley, Pomona, Santa Barbara, Palmdale, and Lancaster (the "Territory"), as further set forth in this Agreement (the "Objective").

2. Program Development.

   (a) Geographic Focus. Member shall target all residential Customers and Builders located or operating within the portion of the Territory that is located within Member's jurisdictional boundaries (the "Member Territory") through the Master Marketing Plan.

   (b) Site Eligibility. Eligible sites include existing single-family residential properties ("Existing Homes") and single-family residential properties under construction by participating Builders in accordance with a New Homes Builder Framework ("New Homes") located in the Member Territory.

   (c) Marketing Strategy & Outreach. The Master Marketing Plan shall be jointly developed by the Parties and designed to enlist the participation of Customers and Builders located in the Member Territory.

      (i) Marketing Strategy. Within thirty (30) days, Member shall develop a strategy for marketing and promoting the Program, including:

         1. Specific tactics that will be used to execute the Master Marketing Plan strategy;

         2. An annual budget and description of dedicated resources that will be used to support Program marketing efforts;

         3. Specific communications to be made through its sales channels; and

         4. Dedicated education and links to the Tesla Products offering on the Member website.

      (ii) Marketing Outreach. Member shall provide consistent and targeted marketing outreach consistent with the Master Marketing Plan to prospective Customers and Builders in the Member Territory.

   (d) Sales Support. Member shall:

      (i) Provide sales support for interested Customers and Builders by phone, email, and chat;

      (ii) Provide educational information regarding Tesla Products, economics, billing, maintenance, installation and technical performance of the System and components thereof; and

      (iii) Convert inbound interest and leads into Orders that (i) that Customers may submit to Tesla through the Existing Homes Retrofit Energy Order Tool; and (ii) participating Builders may submit to Tesla through the New Homes Energy Order Tool.

   (e) Order Funding. The Program Fund, CalChoice and Member shall facilitate the establishment of a fund (the "Program Fund") that shall be obligated to pay for Orders placed in accordance with the Program criteria set forth herein and that shall own and operate the Systems in accordance with the terms and conditions of each Customer Agreement.

3. Customer Eligibility; Engagement.

   (a) Eligibility. To be eligible for participation in the Program, a Customer must: (i) either own an Existing Home or have entered into an agreement with a Builder to purchase a New Home, (ii) be an existing participant, or agree to become a participant, in the CalChoice Member's Community Choice Aggregation program ("CCA") with utility service provided by Southern California Edison

("Utility"), (iii) agree to host a System installed on the home and to provide the Program Fund, as System owner, and its agents with a non-exclusive license (the "Site License") for access to the Site for the entire term of the Customer's participation in the Program for the purposes operating and maintaining the System; and (iv) agree to purchase an equivalent amount of energy generated by the System pursuant to a Solar Power Purchase & Energy Storage Services Agreement (each, a "Customer Agreement") using the form attached hereto as Attachment A.

(b) Customer Engagement. Member shall encourage Customers with New Homes to accept the transfer and assumption of a Customer Agreement from a participating Builder in accordance with the terms and conditions of the applicable New Homes Builder Framework as more particularly described in Section 4. Member shall encourage Customers with Existing Homes to place Orders directly with Tesla and to enter into a Customer Agreement in accordance with Section 5.

4. New Homes Builder Framework Agreement.

(a) Builder Framework Agreement. During the Term, the Parties may consider Builders for participation in the Program. Upon Tesla confirmation of Builder eligibility, The Program Fund and each participating Builder will enter into a New Homes Builder Framework Agreement (the "Builder Framework") in the form attached as Attachment B. Material deviations from the Builder Framework are not permitted without unanimous written agreement of the Parties.

(b) Builder Framework Obligations. Member will request, pursuant to each Builder Framework, that Builders deliver and maintain the following to remain eligible for participation in the Program:

(i) A fully executed Builder Framework;

(ii) Community Specific Terms setting forth the Tesla Product Suite, eligible System information and Pricing applicable to the particular subdivision of new homes (each, a "Community");

(iii) An executed Builder non-disclosure agreement in the form attached to the Builder Framework;

(iv) Orders as set forth in Section 5 placed in accordance with each Builder Framework;

(v) For each Order, a "solar ready" home that will include internal conduit installation, roof dry in and order details developed in consultation with the buyer of each applicable home in the Community (each, a "Home Owner") sufficient for Tesla to complete installation of Tesla Products and the home to pass inspection by the applicable building department as the authority having jurisdiction ("AHJ"); and

(vi) Ongoing compliance with the Builder Framework and Program requirements as Tesla, Member and CalChoice may mutually agree to update from time to time.

5. Orders.

(a) During the Term, Member shall direct eligible Customers to the Existing Homes Energy Order Tool at www.tesla.com and Builders to the New Homes Energy Order Tool developed by Tesla for each Builder to place orders for Tesla Products for installation on Existing Homes or New Homes in the Member Territory in accordance with these Program terms and the form of Customer Order – Program Terms set forth in Attachment C ("Orders").

(b) Tesla shall deliver and install Tesla Products in accordance with each applicable Order. The Program Fund shall purchase and pay for the quantities and types of Tesla Products at the prices stated in each applicable Order. Tesla will review each submitted Order to ensure that it tracks the Program criteria and the Community Specific Terms, if applicable. If Tesla reasonably believes that the Order does not track the Program criteria or the Community-Specific Terms, it will notify the Parties and the Parties will then reasonably cooperate to resolve the issue.

(c) For each Order that is accepted by Tesla (each, an "Accepted Order"), Tesla shall supply, install and commission the Tesla Products at the Site identified in that Accepted Order in accordance with

that Accepted Order and the Work Standards described in Section 8(a) (the "Work"). Accepted Orders will be subject to Tesla's standard terms and conditions.

(d) For purposes of this Agreement and each Accepted Order, "Tesla Products" means a Traditional PV System with a Powerwall, as more particularly set forth in the Community Specific Guidelines of each Builder Framework. A "Traditional PV System" means a traditional solar photovoltaic generating system comprising of solar modules, an inverter and various balance of system components. A "Powerwall" means an energy storage system manufactured by Tesla and accompanying Tesla accessories. Each Traditional PV System, Powerwall shall consist of those that correspond to the specifications published in the Tesla Partner Portal as of the date when an Order for such Tesla Product is submitted.

(e) Tesla agrees to provide Member with access to a platform managed by Tesla that enables access to and control of distributed energy resource assets ("DER Assets"), manufactured by Tesla and owned directly or indirectly by Member or the Program Fund, for monitoring, aggregation, and control (the "Aggregation Platform"). Tesla will not charge Member or the Program Fund any fees for access or use of the platform, but otherwise reserves the right to establish the terms and conditions for Member's access to the Aggregation Platform within an Aggregation Platform Subscription Agreement. Access to the Aggregation Platform excludes aggregation services offered by Tesla.

(f) The Parties acknowledge and agree that Tesla can choose at any time to discontinue a product, feature or option related to any one or more Tesla Products and, in Tesla's sole discretion, can choose whether to provide a comparable product, feature or option, or terminate any affected Order before installation of any Tesla Product. If Tesla fails to provide a comparable product, feature or option to Member's reasonable satisfaction, Member may terminate any affected Order before installation of any Tesla Product.

6. Pricing; Order Payment.

(a) Pricing. Programmatic pricing for Tesla Products is set forth in Schedule 2 (the "Pricing"). The System size or design may be adjusted by Tesla in its reasonable discretion based on a variety of factors, including installation complexity or product availability, provided that the Pricing remains at or below the Pricing set forth on the Program website. If that happens, we will update the Pricing in the applicable Order; Orders with updated Pricing that exceeds the Pricing set forth on the Program website and that are not accepted will be terminated.

(b) Order Payment. For Accepted Orders, the price for the Work performed by Tesla under each Accepted Order shall be the Contract Price identified in that Accepted Order. The Program Fund shall pay the Contract Price for each Accepted Order plus applicable taxes within 30 days after receipt of Tesla's invoice, which Tesla shall provide after the affected Tesla Products have been installed and passed inspection by the AHJ. Passed inspection shall also be deemed "Acceptance" in this Agreement and in each Builder Framework.

7. Title; Risk of Loss. Title to and risk of loss for the Tesla Products shall pass to the Program Fund after Acceptance.

8. Permits. Customers and Builders, as the case may be, shall bear the obligation to obtain and maintain all permits required for Tesla to install each Tesla Product (the "Permits"), except that Tesla shall include the cost of Permits in Orders for Existing Homes.

9. Installation.

(a) Work Standards. Tesla, or its approved subcontractors, will perform the Work according to Tesla's standard practices and the "Tesla Work Standards" set forth in Exhibit 2 to each Builder Framework exercising the reasonable skill and care of an installation contractor and in accordance with mandatory laws, regulations and permits applicable to the Work.

(b) Subcontractors. Tesla will be responsible for all work performed by, and acts or omissions of, each subcontractor and will ensure that all subcontractors are licensed as required by applicable law.

(c) Safety. Tesla shall ensure that all Tesla employees and subcontractors comply with Builder's safety procedures and requirements while on Sites during prosecution of the Work.

10. Failure to Perform.

(a) If any Party believes that any other Party is not satisfying its obligations under this Agreement or with respect to an Order, such Party must notify the other Party in writing. Whichever Party is notified of not meeting its obligations will have 30 days after receiving that notice to correct the issue. If not, whoever gave the notice can terminate the affected Order or this Agreement in accordance with Section 13.

(b) In addition, if Tesla notifies the Parties of the Program Fund's failure to pay the Price for an Order, Tesla can suspend work on that Order and, if not cured within ten (10) days, Tesla can suspend performance under this Agreement.

(c) If a Customer or Builder terminates an Order for Tesla's failure to perform before installation of the Tesla Products for that Order has commenced, Tesla will return any payment(s) made toward the Price for those products.

(d) If either party terminates an Order for the other party's failure to perform, except as specified in the next sentence, Tesla may take back all components of any Tesla Products Tesla delivered but that have not yet been installed for that Order and shall not have any further obligation to deliver product pursuant to this Agreement or that Order. In addition, if an Order is terminated pursuant to this Section, Tesla will complete the installation of Tesla Products where installation is partially complete, unless otherwise requested by the Program Fund (in which case, Tesla will deinstall and remove the Tesla Products from the affected home and return the jobsite to its original condition, at no cost). Each Party will also be able to pursue all rights and remedies available at law or in equity with respect to the failure to perform, except as otherwise provided in Section 13, below. Breaches of one or more Orders will not constitute breaches under any other Orders or under this Agreement, and breaches of this Agreement independent of any Orders shall not constitute breaches of any Orders.

11. Warranties.

(a) Starting on the date of installation, Tesla warrants to the Program Fund that all materials, equipment and work furnished by Tesla as part of an Order will be:

(i) of good quality, free from fault and defects, and

(ii) performed in a good and workmanlike manner, in accordance with all applicable laws, building codes and ordinances, and in strict conformity with the Order.

If the Program Fund notifies Tesla within 1 year after Acceptance (for Existing Homes) or the initial close of escrow by a Home Owner (for New Homes), Tesla shall, at its sole expense, immediately correct or replace any Work that is defective or determined to be not in accordance with the requirements of the above warranties.

(b) Tesla's warranties in this Agreement are limited, as they do not cover (i) any defect or damage to the extent caused (A) by events that are (1) beyond Tesla's reasonable control, (2) not reasonably foreseeable, and (3) not caused by Tesla's or its subcontractor's negligence, or (B) by Customer or Program Fund misuse or negligence, and (ii) any material or equipment connected to the Tesla Products that Tesla did not install. Tesla is not providing any warranties in connection with this Agreement other than those in this Agreement or in the product warranties provided by Tesla pursuant to Section 11(c), even if those other warranties are express or implied by any law.

(c) Tesla's warranties under this Agreement shall in all cases survive termination of this Agreement

and the transfer of title in the home to a third-party purchaser, except for a Home Owner (whose warranty is set forth in Sections 11(e) and 11(f)).

(d) With respect to any warranty claim by the Program Fund under Section 11(a) for the correction, replacement and warranty work, the remedies set forth in Section 11(a) and in Sections 10(d) and 11, as applicable, are the Program Fund's sole and exclusive remedies. For clarity, the foregoing shall not limit the Program Fund's ability to bring claims for other purposes not related to the correction, replacement and warranty work as set forth in this Section 11(d), including, without limitation, the Program Fund's rights to indemnification under Section 14.

(e) If a Home Owner exercises a buyout option and purchases any Tesla Product from the Program Fund, Tesla will cover each Home Owner with limited warranties for Tesla Products in the forms attached as Exhibit 3 to each Builder Framework, as applicable.

(f) In addition, Tesla will provide to each Home Owner the workmanship warranty attached as Exhibit 4 to each Builder Framework, assuming the Program Fund assigns that warranty to the Home Owner.

(g) The manuals and equipment warranties for Tesla Products are available upon request after each Order.

12. Proprietary Rights.

(a) Ownership. As between the Parties, Tesla shall remain the sole and exclusive owner of any and all Proprietary Rights associated with the System or any parts or derivations thereof. "Proprietary Rights" means patents, trademarks, copyrights, mask work rights, trade secrets and any other intellectual or proprietary rights.

(b) License. Tesla hereby grants to Member and CalChoice a limited, non-exclusive, non-sublicensable, non-transferable license to use the materials that Tesla provides for implementing the Master Marketing Plan and marketing the Plan in accordance with this Agreement. Except for the foregoing, no license or other right to Tesla's Proprietary Rights is granted or implied hereby.

13. Termination.

(a) Termination for Cause. Each Party may terminate its participation in this Agreement or any Accepted Order for cause in the event (i) an insolvency event involving one of the other Parties; or (iii) any Party has materially breached any provision of this Agreement (other than non-payment) and, within 30 days after receipt of written notice of such breach from a non-breaching party, the breaching party has failed to cure such breach or, in the event the breach cannot reasonably be cured within such 30 day period, submit a plan for cure acceptable to each non-breaching party in its reasonable discretion. The termination of this Agreement by any single Party shall result in the termination of this Agreement as to all Parties.

(b) Insolvency Event. An "Insolvency Event" occurs with respect to a Party (i) if it is adjudged bankrupt; (ii) if it makes a composition or arrangement with its creditors; (iii) if it has a winding up petition or a petition for an administration order presented against it; (iv) if it has a receiver or manager or administrative receiver or provisional liquidator appointed; or (v) upon the happening of any other event of insolvency.

(c) Effects of Termination. Except as otherwise set forth in this Agreement, the expiration or termination of this Agreement will not affect any rights or obligations of the Parties that were incurred or that accrued prior to such expiration or termination. Termination shall not be deemed an election of remedies, and the non-defaulting party shall have all rights and remedies available under applicable law in connection with and following such termination.

14. Indemnification.

(a) Except to the extent permitted by this Agreement, no Party to this Agreement will be obligated to indemnify any other Party from any losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable legal fees ("Losses") to the extent arising out of or due to the negligence or willful misconduct of such other Party. For purposes of this Agreement and each Builder Framework, "Indemnified Parties" means for each Party, (i) the Party and any person providing financing to the Party with respect to the System, (ii) any affiliate of the persons set forth in clause (i), and (iii) any director, officer, partner, member, manager, agent or employee of a person described in clause (i) or (ii); and, "Indemnifying Party" means each other Party, as the context requires.

(b) Tesla's Indemnities. Tesla will indemnify, defend and hold harmless each other Party's Indemnified Parties from any Losses arising out of any claim, action, suit, proceeding, investigation made or brought by any third party ("Claims"):

i. that Tesla Products (or any component or software thereof) or Tesla's Work pursuant to any Accepted Order infringes the intellectual property rights of a third party, other than a Claim for which such Party is responsible under Section 11(c). In addition, if such Party is enjoined from the use, operation or enjoyment of Tesla Products or any part thereof as a result of any Claim alleging that Tesla Products or Tesla's Work infringes the intellectual property rights of a third party, Tesla will at no cost to such Party, at Tesla's option: (1) have such injunction removed, (2) substitute non-infringing goods or processes, or (3) modify the infringing goods or processes so they become non-infringing and provide the same or better functionality and performance relative to the affected item's then-current functionality and performance; and

ii. in connection with the design, construction, installation, warranty service, workmanship, materials or functionality of any materials, equipment and work furnished by Tesla, except with respect to any modification by any party other than Tesla (directly or indirectly) or use or reuse of Tesla Products that are the subject of an Accepted Order other than as permitted under this Agreement or their warranties.

(c) CalChoice and Program Fund Intellectual Property Indemnity. CalChoice and Program Fund will indemnify and hold harmless Tesla and Tesla's Indemnified Parties from any Losses arising out of Claims alleging infringement to the extent involving Member, CalChoice or Program Fund and:

i. a particular design, process or product required or specified pursuant to any Accepted Order or where the copyright violations are contained in drawings, specifications or other documents prepared or provided by Member, CalChoice or Program Fund or others for whom Member, CalChoice or Program Fund are responsible,

ii. any modification by any party other than Tesla (directly or indirectly), use or reuse of Tesla Products other than as permitted under this Agreement or their warranties,

iii. use of Tesla Products in combination with any other products, materials or equipment not expressly authorized in writing by Tesla in circumstances where the infringement would have been avoided by the use of Tesla Products not so combined, unless such other products, materials or equipment are provided, required or approved by Tesla (as indicated by reasonable evidence) for, or are intrinsic to, use of Tesla Products, or

iv. any modifications or changes made to Tesla Products by any party other than Tesla other than at the direction (as indicated by reasonable evidence) of Tesla in circumstances where the infringement would have been avoided without such modifications or changes.

15. Limitation of Liability. Except for indemnification obligations (Section 14), breach of confidentiality (Section 17), or any gross negligence or willful misconduct, the Program Fund's and Tesla's total liability for all damages of any kind arising out this Agreement will not exceed $1,000,000.00 and neither Member nor CalChoice shall bear any liability for any damages of any kind arising out this Agreement. Also, no party will

have to pay any other party for any indirect, special or consequential damages.

16. Force Majeure. Each Party shall be excused from performance and shall not be considered to be in breach with respect to any obligation hereunder other than any obligation to pay money due and owing, if and to the extent that such Party's failure of, or delay in, performance is caused by or results from acts or circumstances beyond the reasonable control of such Party (a "Force Majeure Event"); provided:

    (a) such Party gives the other Parties notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable and in any event within ten (10) Business Days after the discovery of the Force Majeure Event and its impact on such Party's performance;

    (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

    (c) the Party uses reasonable endeavors to:

        (i) overcome or mitigate the effects of such occurrence, and

        (ii) minimize costs and expenses attendant to or arising from such occurrence;

    (d) when the Party is able to resume performance of the affected obligations, such Party shall so notify the other Party and promptly resume performance;

17. Confidentiality; Publicity.

    (a) Except for communications exchanged between each Party, each Party will keep any disclosures, as well as the terms of this Agreement, confidential in accordance with the non-disclosure agreements between them (the "NDAs") and agree that this Agreement is confidential information of each of them for purposes of the NDAs. (Even though the NDAs are separate documents, they are considered part of this Agreement).

    (b) Neither Party will advertise or issue any public announcement about this Agreement, or use the other Party's mark, name or logo in any marketing literature, web sites, articles, press releases (including interviews with representatives of media organizations of any form), or any other document or electronic communication, without the other Party's written consent.

    (c) Nothing in this Agreement, the NDAs, or any other agreement between the Parties limits or prohibits any announcement, disclosure, or other act that is required by law, including, but not limited to, the California Public Records Act.

18. Governing Law; Disputes.

    (a) The Parties agree to comply with all applicable laws and regulations in connection with this Agreement. This Agreement is governed by the laws of the State of California. Any dispute arising out of or relating to this Agreement shall be brought in the Superior Court of California, County of Los Angeles, or the United States District Court for the Central District of California.

    (b) The Parties are not bound by any terms relating to Tesla Products or other matters covered by this Agreement or any Order that are not contained in this Agreement or the affected Order.

    (c) Each of the Parties also agree to promptly notify the other's senior level management if there is any dispute relating to this Agreement or any Orders and to try to resolve the dispute in good faith. If the Parties are unable to resolve a dispute within 20 days after that notice is given, then either Party can take the dispute to arbitration through Judicial Arbitration and Mediation Services ("JAMS") according to JAMS Streamlined Arbitration Rules. The existence, content and result of the arbitration will be confidential. The arbitration will be conducted by a single arbitrator in English and in Los Angeles, California, unless otherwise agreed by the Parties. We will each bear our own expenses in the arbitration and will share equally the costs of the arbitration unless the

arbitrator assigns costs to one of us. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

19. Miscellaneous.

(a) Representations. Each Party represents and warrants to the other Parties that (i) it is a legal entity, duly organized, validly existing and in good standing under the laws of jurisdiction of incorporation; (ii) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; and (iii) the execution, delivery and performance of this Agreement (A) is within its powers, (B) has been duly authorized by all requisite action and (C) will not violate any agreement, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.

(b) Compliance with Law. Each Party will comply with all applicable laws and regulations in connection with its performance under Agreement.

(c) Notices. All notices under this Agreement must be in writing and must be sent via email, or express and/or certified mail, to the contacts identified in the Key Terms.

(d) Assignment. Tesla or The Program Fund can assign this Agreement and each Accepted Order (i) to an affiliate of Tesla or The Program Fund, respectively, and (ii) as collateral in connection with its financing activities, in either case without the need for consent from any other Party.

(e) Insurance. Each Party shall carry and maintain in force, with reputable insurance companies authorized to do business in the jurisdictions where the portion of the Member Territory is located. Each of the Parties shall each maintain all insurance that such Party is required by law to maintain. In connection with the Work pursuant to each Builder Framework and Accepted Order, Tesla shall be required to maintain insurance as set forth in Exhibit 6 to the Builder Framework.

(f) Cumulative and Certain Exclusive Remedies. Except as otherwise specifically set forth in this agreement, all rights and remedies provided under this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

(g) Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, representations and understandings, oral or written, between the Parties regarding the subject matter hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such term shall be severable from the remainder of this Agreement and the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by the law.

(h) Amendment and Modification. No amendment or modification of this Agreement is effective unless it is in writing and signed by each Party.

(i) Waiver. No waiver by either Party of any provision of this Agreement is effective unless explicitly set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise thereof or the exercise of any other right or remedy.

(j) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

(k) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(l) Survival. Provisions of this Agreement which by their nature contemplate or govern performance or observance subsequent to the termination or expiration of this Agreement shall survive such termination or expiration.

Schedule 2
Pricing

The following terms set forth in this table listed below (the "Pricing") shall apply to each Accepted Order as of the date the Accepted Order is received by Tesla in accordance with the terms and conditions of this Agreement. The Parties agree that Tesla may, in its reasonable discretion, based upon community-specific factors, including installation complexity, as well as recent market factors and product availability, update the Pricing applicable to each Community pursuant to each New Home Builder Framework so long as the Pricing is at or below the Pricing set forth on the Program website. Pricing shall not exceed the Pricing on the Program website absent written Notice to the Parties (including email) and written acceptance by each applicable Party or any other method as may reasonably be agreed upon by the Parties.

Solution	Price
Solar PV (Rooftop)	$2.42/Wp
Powerwall – 1st	$11,500
Powerwall – Each Additional	$7,000
15 Year Powerwall Extended Warranty - Each	$650
Member Services	$0.40/Wp of PV
Tesla Pre-Construction Services Examples: *Remove copper from roof; upgrade structure; remove existing solar PV; remove/relocate AC unit; remove/fix existing generator; remove existing battery backup; remove/relocate existing solar thermal; remove/relocate rooftop vents; remove/trim tree; clean roof surface; fix electrical code violation; remove/relocate shelving; master-panel upgrade (MPU) (situational)*	14.5¢ PPA: $0 - $750 in pre-construction services 15.0¢ PPA: $751 - $2,500 in pre-construction services 15.5¢ PPA: $2,500 - $5,000 in pre-construction services Project Ineligible: > $5,000 in pre-construction services

By way of example, for a typical System (7.6 kW Solar PV + 1 Powerwall)

Solution	Price
7.6 kW Solar PV	$18,392
Powerwall – 1st	$11,500
Powerwall – Each Additional	$0 (N/A)
15 Year Powerwall Extended Warranty - Each	$650
Member Services	$3,040
Tesla Pre-Construction Services	$2,000
TOTAL:	$35,582 (corresponds to a 15.0¢ Customer PPA)

Attachment A

Form of Customer Agreement

[Insert]

Attachment B
Form of New Homes Builder Framework Agreement

[Insert]

Attachment C
Form of Customer Order – Program Terms

[Insert]

RESIDENTIAL SOLAR / ENERGY STORAGE PROGRAM

POWER PURCHASE AND SALE AGREEMENT

BETWEEN

CITY OF PALMDALE, A CALIFORNIA MUNICIPAL CORPORATION, D/B/A ENERGY FOR PALMDALE'S INDEPENDENT CHOICE

AND

PARTICIPATE.ENERGY LLC

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RESIDENTIAL SOLAR / ENERGY STORAGE PROGRAM

POWER PURCHASE AND SALE AGREEMENT

This Residential Solar / Energy Storage Program Power Purchase and Sale Agreement (this "**Agreement**") is made and effective as of _____, 2023 (the "**Effective Date**"), by and between **Participate.Energy LLC** ("**Seller**") and CITY OF PALMDALE, A CALIFORNIA MUNICIPAL CORPORATION, D/B/A ENERGY FOR PALMDALE'S INDEPENDENT CHOICE ("**Buyer**"). Seller and Buyer are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Article 1.

RECITALS

A, Seller desires to develop, design, construct, finance, own and operate residential solar and energy storage systems to be located at private residences within Buyer's service territory (each a **"System"** or, collectively, the **"Systems"**).

B. Seller desires to sell to Buyer, and Buyer is willing to purchase from Seller the Product generated by each System pursuant to the terms and conditions of this Agreement.

C. Buyer and Seller intend that Seller will add Systems to this Agreement from time to time during the Portfolio Term. Each System, once such System has reached Commercial Operation evidenced by delivery from Seller to Buyer of (i) written confirmation from the System installer that such System has been completed, and (ii) an updated Included Systems List attached hereto as Exhibit A listing such new System as a system covered under this Agreement, shall be covered under the terms of this Agreement, and Buyer shall purchase from Seller the Product generated by such System as of the Commercial Operation Date.

D. In consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the preamble and includes any exhibits, schedules and any written supplements hereto, any designated collateral, credit support or similar arrangement between the Parties.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Bankruptcy Code**" means the United States Bankruptcy Code (11 U.S.C. §101 *et seq*.), as amended, and any successor statute.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" has the meaning set forth in the preamble.

"Buyer's Service Territory" means the service territory of Buyer

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"Commercial Operation" means, with respect to each System, the condition existing when (i) all conditions to operate the System, including without limitation all applicable regulatory authorizations, approvals and permits for the operation of the System have been obtained, satisfied and complied with, and are in full force and effect, in order to produce, sell and transmit Energy.

"Commercial Operation Date" means the first date of Commercial Operation of a System after completion of a System as confirmed in writing by the System installer.

"**Confidential Information**" has the meaning set forth in Section 20.1.

"**Contract Capacity**" means, with respect to each System the kW AC capacity measured at the Delivery Point set forth in the Included Systems List with respect to such System.

"**Capacity Charge**" has the meaning set forth in Section 4.3.

"**Contract Price**" has the meaning set forth in Section 4.3.

"**Contract Term**" has the meaning set forth in Section 3.1.

"**Contract Year**" means with respect to any and all Systems a twelve (12) month period beginning on the Commercial Operation Date and each successive twelve (12) month period thereafter during the Contract Term.

"Customer" means the property owner of the property where a System is located.

"Customer Agreement" means an agreement between the Seller and Customer relating to (a) the installation of the System at the property, (b) the sale of power generated by the System by Seller to Buyer, and (3) the sale by Buyer to the Customer of an amount of electric power, which is equivalent to electric power generated by the System located on the property.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"**CPUC**" means the California Public Utilities Commission, or successor entity.

"**Defaulting Party**" has the meaning set forth in Section 12.1(a).

"**Delivered Energy**" means with respect to each System all Energy produced from the System as measured in kWh at the System Delivery Point.

"**Delivery Point**" or **"System Delivery Point"** means with respect to each System the point of delivery for Energy as set forth in the final as-built plans for such System.

"**Early Termination Date**" has the meaning set forth in Section 12.2.

"**Effective Date**" has the meaning set forth on the preamble.

"**Energy**" means metered electrical energy, measured in kWh, which is produced by each System or by a number of Systems in the aggregate.

"**Energy Rate**" has the meaning set forth in Section 4.3.

"**Event of Default**" has the meaning set forth in Section 12.1.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Force Majeure Event**" has the meaning set forth in Section 11.1.

"**Future Environmental Attributes**" shall mean, with respect to each System, any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or

business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the System.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Resource Adequacy Benefits.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; *provided*, *however*, that "Governmental Authority" shall not in any event include the Buyer except to the extent the Buyer is exercising its authority as a local government and not in furtherance of this Agreement.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;[1] (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or

[1] Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

other power attributes from the System, (ii) production tax credits associated with the construction or operation of the System and other financial incentives in the form of credits, reductions, or allowances associated with the System that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits. If the System is a biomass or landfill gas System and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the System.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS operating rules.

"Included Systems List" means a list of Systems covered by the terms of this Agreement, of which Seller will sell to Buyer, and Buyer will purchase from Seller the Product generated by each System listed thereon. The Included System List will be amended by means of Seller delivering an updated Included Systems List to Buyer from time to time, listing any new System completed by Seller. The initial Included Systems List is attached hereto as Exhibit A and subsequent Included Systems List amended as stated above shall automatically replace any prior Included Systems List as Exhibit A attached hereto. Absent manifest error or fraud, each updated Included Systems List shall be binding upon the Parties.

"**Indemnified Party**" has the meaning set forth in Section 18.1.

"**Indemnifying Party**" has the meaning set forth in Section 18.1.

"**Installed Capacity**" means, with respect to each System, the System demonstrated peak System electrical output measured in kW AC at the System Delivery Point.

"**Interest Rate**" has the meaning set forth in Section 9.2.

"**kW**" means kilowatts measured in alternating current.

"**kWh**" means kilowatt-hour.

"**Law**" means any applicable law, statute, regulation, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the System, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form

(including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity investor directly or indirectly providing financing or refinancing for the System or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the System.

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Resource Adequacy Benefits.

"**MW**" means megawatts measured in alternating current.

"**MWh**" means megawatt-hour.

"**Non-Defaulting Party**" has the meaning set forth in Section 12.2.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

"**Party**" has the meaning set forth in the preamble.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"Portfolio Term" means the time period commencing on the Effective Date and ending on the 5th anniversary thereof.

"Pre-Construction Expenses" means expenses incurred by Seller or its contractors prior to construction of a System to prepare the System site for System integration, which may include, without limitation, removal of copper or other materials from roof; upgrade roof structure; removal of existing solar PV; removal or relocation of AC unit; removal or repair of existing generator; removal of existing battery backup; removal or relocation of existing solar thermal; removal or relocation of rooftop vents; removal of trees or obstructions and tree trimming; cleaning of roof surface; repair of electrical code violation; removal or relocation of shelving; or master-panel upgrade (MPU).

"**Product**" means, with reference to each System, all electric energy produced by the System throughout the System Delivery Term; all Green Attributes; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the System throughout the System Delivery Term.

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Qualified Assignee**" means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller's obligations (considering such Person's own financial wherewithal and that of such Person's guarantor or other credit support) under this Agreement.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means with respect to each System: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the System (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); and (b) any other form of incentive relating in any way to the System that are not a Green Attribute or a Future Environmental Attribute.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the System that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the System.

"**Seller**" has the meaning set forth in the preamble.

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"**System(s)**" has the meaning set forth in the Recitals hereto.

"System Delivery Term" means with respect to each System the period of twenty-five (25) Contract Years beginning on the Commercial Operation Date and ending on the twentieth (25th) anniversary of the Commercial Operation Date, unless terminated earlier or extended in accordance with the terms and conditions of this Agreement. In the event of an extension of a Customer Agreement beyond 25 years, the System Delivery Term for the respective System shall be extended to be co-terminus with such Customer Agreement.

"**System Forecast List**" has the meaning set forth in Section 20.1. The format of the System Forecast List shall be substantially similar to the format of the Included Systems List.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Termination Payment**" has the meaning set forth in Section 12.3.

"**Terminated Transaction**" has the meaning set forth in Section 12.2.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8**Error! Reference source not found.**.

"**WREGIS Certificate(s)**" means "Certificate(s)" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
SYSTEMS, COMMERCIAL OPERATION, FORECASTING

2.1 **Systems**. During the Portfolio Period, Seller shall use reasonable commercial efforts to design, develop and install Systems in Buyer's Service Territory. Each System developed by Seller in Buyer's Service Territory shall be developed exclusively for inclusion under the terms of this Agreement.

2.2 **Commercial Operation.** Within ten (10) days after a System qualified under Section 2.1 above has reached Commercial Operation, Seller shall deliver to Buyer confirmation by the System installer either in hardcopy or electronic that such System has been completed and an updated Included Systems List adding such System thereon. Upon delivery of the updated Included Systems List, such System shall be covered under the terms of this Agreement.

2.3 **Forecasting.** Within ten (10) days after the end of each calendar quarter during the Portfolio Period, Seller shall deliver to Buyer a list (the **"System Forecast List"**) with Systems which Seller forecasts to place into Commercial Operation within ninety (90) days after the date of the System Forecast List.

ARTICLE 3
TERM

3.1 **Contract Term**. The term of this Agreement (**"Contract Term")** consist of the Portfolio Term and the System Delivery Term, and shall commence on the Effective Date and shall remain in full force and effect with respect to each System until the end of the applicable System Delivery Term unless earlier terminated as provided herein.

3.2 **Contract Term Extension.** Buyer shall have the right, but not the obligation, to extend the System Delivery Term for any System for two additional five (5) Contract Years at the then-current Contract Price, but Seller must receive Notice of such extension at least one hundred eighty days (180) before the end of the initial Contract Term or the then current extension term thereof.

3.3 **Survival of Contract Provisions.** Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect four (4) years following the termination of this Agreement.

ARTICLE 4
PURCHASE AND SALE

4.1 **Sale of Product.** Subject to Seller's document deliveries to Buyer under Section 2.2 above and the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Energy Rate, all of the Product produced by a System delivered to the System Delivery Point. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product from the System for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product from any System that is not or cannot be delivered to the System Delivery

Point as a result of any circumstance, including, an outage of the System, a Force Majeure Event affecting Buyer's ability to receive the Product (but not its ability to transmit the Product from the System Delivery Point). In no event shall Seller have the right to procure any element of the Product for sale or delivery to Buyer from sources other than the Systems covered under the terms of this Agreement.

4.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by a Systems covered under the terms of this Agreement at no additional cost.

4.3 **Compensation**. The contract price payable by Buyer to Seller hereunder (the "**Contract Price**") shall be calculated as the sum of Energy Rate and Capacity Charge.

(a) Energy Rate. For each kWh delivered to a System Delivery Point Buyer shall pay Seller the following amounts (the **"Energy Rate"**) during the first Contract Year of each System Delivery Term:

(i) fourteen and one-half U.S. Cents ($0.145) for Systems with Pre-Construction Costs of seven hundred fifty Dollars ($750.00) or less;

(ii) fifteen U.S. Cents ($0.15) for Systems with Pre-Construction Costs exceeding seven hundred fifty Dollars ($750.00) but less than two thousand five hundred Dollars ($2,500);

(iii) fifteen and one-half U.S. Cents ($0.155) for Systems with Pre-Construction Costs exceeding two thousand five hundred Dollars ($2,500) but less than five thousand Dollars ($5,000)

The applicable Energy Rate for the first Contract Year of the System Delivery Term will be set forth on the Included Systems List for each System. For each subsequent Contract Year during the System Delivery Term, the Energy Rate shall increase by one and nine-tenth percent (1.9%) annually.

(b) Capacity Charge. For each System that includes an installed and operational Tesla Powerwall, Buyer shall pay Seller a monthly fee (the **"Capacity Charge"**) in the amount of one hundred fifteen Dollars ($115.00), *provided, that* the Capacity Charge shall be reduced to seventy-five Dollars ($75.00) for any additional Tesla Powerwall installed at the same System site.

4.4 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

4.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the System unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 4.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

4.6 **Sale of Energy to Customers.** Buyer agrees to sell the electric energy produced by the System throughout the System Delivery Term at a price not higher than the Energy Rate and at terms no less favorable than the terms set forth under this Agreement.

4.7 **Transfer of Renewable Energy Credits.**

(a) *Tracking of RECs in WREGIS*. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to or immediately after the first delivery of Product under the terms of this Agreement.

(b) *Transfer of Renewable Energy Credits*. Seller and, if applicable, its successors, represents and warrants that throughout the System Delivery Term for each applicable System, the Renewable Energy Credits relating to such System transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the System Delivery Term for each applicable System, the Delivered Energy of such System qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this

representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

4.8 **WREGIS.** Seller shall, take all reasonable commercial actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.

(a) Prior to the Commercial Operation Date, Seller shall register the System with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the System Delivery Term for the last System to operate under the terms of this Agreement. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**") with not less than 30 days prior written notice or such longer notice as is required for Seller to meet mandatory notice periods under WREGIS Operating Rules. Seller shall be responsible for all expenses associated with registering each System with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Delivered Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by each System's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 9.2, Buyer shall make an invoice payment for a given month in accordance with Section 9.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 9.2.

(e) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month..

ARTICLE 5
OBLIGATIONS AND DELIVERIES

5.1 **Delivery.**

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis at the respective System Delivery Point. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy from and after the System Delivery Point.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the System, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the System.

5.2 **Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Delivered Energy generated by each System shall pass and transfer from Seller to Buyer at the System Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

ARTICLE 6
TAXES

6.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to any System or on or with respect to the sale and making available Product to Buyer, that are imposed on Product prior to the System Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from a System Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). Notwithstanding the foregoing, each Party shall be responsible for its own Taxes calculated based on the income or profits generated in connection with the purchase and sale of the Product hereunder. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

6.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefore from the other Party.

ARTICLE 7
MAINTENANCE OF SYSTEMS

7.1 **Maintenance of Systems**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of all System covered under this Agreement, and the generation and sale of Product generated therefrom.

7.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of each System. If Seller becomes aware of any circumstances relating to a System that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of such System, or suspending the supply of Energy from such System to Buyer.

ARTICLE 8
METERING

8.1 **Metering**. Seller shall measure the amount of Energy produced at each System using a commercially available, revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer.

8.2 **Meter Verification**. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meters of a reasonable sample of all Systems then covered under this Agreement, but in any case, not more than ten percent (10%) of all installed Systems. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test for the respective System shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period. If testing of meters from a reasonable sample of all Systems covered under his Agreement discovers more than ten percent 10% of tested meters being inaccurate by more than one percent (1%) each, Buyer may request testing of an additional reasonable sample of all Systems then covered under this Agreement, but in any case, not more than an additional ten percent (10%) of all installed Systems.

ARTICLE 9
INVOICING AND PAYMENT; CREDIT

9.1 **Invoicing**. Seller shall make good faith efforts to deliver an aggregate invoice to Buyer for the Contract Price due for all Systems then covered under this Agreement no later than fifteen (15) Business Days after the end of the prior monthly billing period.

9.2 **Payment**. Buyer shall make payment to Seller for the Contract Price due and payable by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to 10% of the total amount due. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

9.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the non-erring Party received Notice thereof.

9.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by

the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

9.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

ARTICLE 10
NOTICES

10.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth Exhibit B or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

10.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 11
FORCE MAJEURE

11.1 **Definition.**

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control

(whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price than the Contract Price, Buyer's inability economically to use or resell the Product purchased hereunder, or Seller's ability to sell Energy at a higher price than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the System; (ii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the System; (v) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the System; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

11.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

11.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice

shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

11.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive eight (8) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party with respect to the System experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 3.3.

ARTICLE 12
DEFAULTS; REMEDIES; TERMINATION

12.1 **Events of Default. An "Event of Default" shall mean,**

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 15.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(vii) with respect to Seller as the Defaulting Party, if at any time, Seller delivers or attempts to deliver to a System Delivery Point for sale under this Agreement Energy that was not generated by the respective System.

12.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) Business Days after such Notice is deemed to be received, as an early termination date ("**Early Termination Date**") of (i) the inclusion of a System under this Agreement and the respective System Delivery Term, if the Event of Default only relates to such System, or (ii) this Agreement, if the Event of Default relates to all Systems (in each case, (i) and (ii), the "**Terminated Transaction**"), and either the System Delivery Term (in case of option (i)) or the Contract Term (in case of Option (ii) will terminate effective as of the Early Termination Date, and all amounts owing between the Parties shall accelerate (under option (a), however, only with respect to the terminated System), and the Non-Defaulting party may collect liquidated damages calculated in accordance with Section 12.3 (*Termination Payment)* below; (b) to withhold any payments due to the Defaulting Party under this Agreement (but under option (a)(i) only with respect to the terminated System); (c) to suspend performance (but under option (a)(i) only with respect to the terminated System); and (d) to exercise any other right or remedy available at law or in equity, including injunctive relief to the extent permitted under this Agreement, except to the extent such remedies are expressly limited under this Agreement

12.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts relating to such Terminated Transaction plus any or all other amounts due to the Non-Defaulting Party relating thereto netted into a single amount. If the Non-Defaulting Party's aggregate Gains relating to a Terminated Transaction exceed its aggregate Losses and Costs related thereto, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages, lost revenues or lost profits; provided, however, that any lost Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

12.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail

the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

12.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 17.

12.6 **Rights And Remedies Are Cumulative**. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 12 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

12.7 **Mitigation**. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 13
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

13.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, BUSINESS INTERRUPTION OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

13.2 **Waiver and Exclusion of Other Damages**. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

14.2 **Buyer's Effective Date Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by

way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

14.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 15
ASSIGNMENT

15.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

15.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 16.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 15.2. Any assignment by Seller, its successors or assigns under this Section 15.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

15.3 **Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 16.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 15.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 16
LENDER ACCOMMODATIONS

16.1 **Granting of Lender Interest**. Notwithstanding Section 15.2 or Section 15.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

16.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 16.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 12.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

16.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 12.1 or 12.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

ARTICLE 17
DISPUTE RESOLUTION

17.1 **Governing Law**. This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. Venue shall be Riverside County, California.

17.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 18
INDEMNIFICATION

18.1 **Indemnification.**

(a) To the extent permitted by Law, each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents in the performance of this Agreement or relating to the Systems.

(b) Nothing in this Section 18.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

18.2 **Claims**. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 18 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 18, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 19
INSURANCE

19.1 **Insurance.**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars ($1,000,000) per occurrence, and an annual aggregate of not less than two million dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller shall maintain, or cause to be maintained at its sole expense, Employers' Liability insurance in an amount not less than one million dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million-dollar ($1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the System prior to the Commercial Operation Date, construction all-risk form property insurance covering the System during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 19.1(f).

(g) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage prior to the execution of the agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 19, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 19 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 20
CONFIDENTIAL INFORMATION

20.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

20.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, including but not limited to the California Public Records Act (Government Code Section 6250 et seq.) and the Brown Act (Government Code Section 54950 et seq.), (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

20.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 20 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 13.2, consequential damages.

20.4 **Disclosure to Lender**. Notwithstanding anything to the contrary in this Article 20, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 20 to the same extent as if it were a Party.

ARTICLE 21
MISCELLANEOUS

21.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes

as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

21.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

21.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the System or any business related to the System. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

21.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.6 **Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the Bankruptcy Code

21.7 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

21.8 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.9 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

21.10 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SELLER	**BUYER**
Participate.Energy LLC a Delaware limited liability company	CITY OF PALMDALE, A CALIFORNIA MUNICIPAL CORPORATION, D/B/A ENERGY FOR PALMDALE'S INDEPENDENT CHOICE
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A
INCLUDED SYSTEMS LIST

SYSTEM NAME or ID	**SYSTEM SITE ADDRESS or LOCATION**	**SYSTEM SYSTEM SIZE (kWAC)**	**ESTIMATED FIRST YEAR ANNUAL PRODUCTION** (kWh)	**FIRST YEAR ENERGY RATE**	**ENERGY STORAGE** (No. of Tesla Powerwall Units)

EXHIBIT B
NOTICES

Seller:
Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

Buyer:
Energy for Palmdale's Independent Choice
38300 Sierra Highway
Palmdale, CA 93550
Attn: Contract Administration
Email: rperez@cityofpalmdale.org

With a copy to:

With a copy to:
Name:
Attorney for Buyer
Address:

Phone:
Facsimile:
Email:

Scheduling:
Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

EXHIBIT C

EMERGENCY CONTACT INFORMATION

BUYER:
Ronda Perez
38300 Sierra Highway
Palmdale, CA 93550
Email: rperez@cityofpalmdale.org

WITH COPY TO:
Cathy DeFalco, Energy Manager - Regulatory
California Choice Energy Authority ("CalChoice")
Phone: 805-260-9047
Email: cathy@calchoice.org

SELLER:
Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

PROGRAM MANAGEMENT AGREEMENT

This Program Management Agreement (this "***Agreement***") dated effective as of [February 1, 2023], (the "***Effective Date***") is by and between **CITY OF PALMDALE, A CALIFORNIA MUNICIPAL CORPORATION, D/B/A ENERGY FOR PALMDALE'S INDEPENDENT CHOICE** ("***Program Manager***"), and **Participate.Energy LLC**, a Delaware limited liability company (the "***Owner***"). The parties hereto are sometimes herein referred to individually as a "***Party***" and collectively as the "***Parties***".

RECITALS

A. Program Manager, Owner and Tesla, Inc. (***"Installer"***) have entered into certain agreements for the creation of a distributed solar and energy storage program for residential electricity customers in Program Manager's service territory (the ***"Program"***). Under the terms of the Program, Owner will develop, finance, and own residential solar and energy storage systems to be located at private residences within Program Manager's service territory (each a ***"System"*** or, collectively, the ***"Systems"***), Installer will install the Systems under an installation contract between Installer and Owner (***"Installation Contract"***), and Program Manager will buy from Owner the energy and certain energy attributes and benefits generated by each System under the terms of a certain power purchase agreement between the Parties of even date herewith (the ***"Power Purchase Agreement"***).

B. Owner does not independently maintain the internal capability to perform the Program Management Services (as defined below) that Owner requires in connection with the installation of the Systems, and Program Manager's capabilities are expected to provide significant benefits to Owner. Therefore, Owner desires to engage Program Manager to manage certain aspects of the System permit management, Installer communication, and origination of potential customers in Program Manager's service territory, all as further set forth herein (the ***"Program Management Services"***).

C. In consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

AGREEMENT

In consideration of the above recitals, the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Appointment and Term; Assumption of Development Responsibilities; Standard of Performance**. Owner hereby appoints Program Manager to render the Program Management Services as further described in the *Schedule of Program Management Services* attached hereto as Exhibit A. Program Manager hereby accepts such appointment. The term of this Agreement shall be co-terminus with the term of the Power Purchase Agreement (***"Term"***). Program Manager shall use such diligence, care and prudence in the performance of its obligations

hereunder as are commercially reasonable, and shall devote such time, effort and skills of its personnel as a reasonable service Program Manager in like position would do in like circumstances.

2. **Limitations and Restrictions**. Notwithstanding any provisions of this Agreement, Program Manager shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation with respect to any of the following matters unless and until the same has been approved by Owner:

(a) alteration of any System contemplated by the Installation Contract, except for such matters as may be expressly delegated in writing to Program Manager by Owner;

(b) any proposed change in the installation of a System, or in the plans and specifications therefor as previously approved by Owner, that increases the cost thereof, or any other change that would affect the design, cost, value or quality of any of a System, except for such matters as may be expressly delegated in writing to Program Manager by Owner.

3. **Standard of Conduct.**

a) Program Manager shall provide the Program Management Services, perform its other obligations and exercise its rights or powers under this Agreement in a prudent manner, with the degree of skill and judgment normally exercised by Program Managers performing Program Management Services for the permitting of systems of a similar nature, and in accordance with: (i) any applicable laws and regulations; and (ii) any agreement, instrument or other document to which Owner is a party, and that Owner has delivered to Program Manager, that relates to a System or any component thereof (***"Project Documents"***), except to the extent Owner provides Program Manager with written instructions not to do so in the event Owner is contesting in good faith the validity or application of any such applicable laws and regulations or such term and condition of a System Document, in any reasonable manner.

b) Program Manager may, at any time, if it reasonably considers it to be necessary or appropriate, request written instruction from Owner with respect to any matter contemplated by this Agreement and may defer action thereon pending the receipt of such written instructions.

c) Program Manager shall advise Owner promptly, if it becomes aware of any material inconsistency between any of the following:

(i) Owner's instructions given in accordance with this Agreement from time to time;

(ii) any System Document;

(iii) Required insurance (if any); and

(iv) any applicable laws and regulations or Permit.

d) Any action taken by Program Manager in accordance with the written instructions of Owner, or failure to act pending the receipt of such written instructions, shall be deemed to be within the scope of Program Manager's authority and in accordance with its obligations under this Agreement and, without limitation, shall not constitute gross negligence or willful misconduct as referred in Section 10(b).

4. **Accounts and Records**.

(a) Program Manager, shall keep such books of account and other records relating to each System as may be required by applicable laws and regulations or as reasonably requested by Owner in writing. All accounts and records relating to a System, including all correspondence, shall be surrendered to Owner upon demand without charge therefor.

(b) All books and records prepared or maintained by Program Manager shall be kept and maintained at all times at secure locations accessible to Owner for audit, inspection and copying by Owner or any representative or auditor therefor or supervisory or regulatory authority upon reasonable written request.

(c) During the Term, Program Manager shall keep Owner reasonably informed as to the status of the Program Management Services provided by Program Manager. Program Manager shall notify Owner in writing of any material event related to the Program Management Services provided by Program Manager hereunder.

5. **Accrual Schedule**. The Program Management Agreement Fee (as defined below) shall be earned in full for a System when a System is placed in service for purposes of Sections 48 and 168 of the Internal Revenue Code, as amended, and shall be paid promptly when a System has reached final completion under the terms of the respective Installation Contract (collectively, ***"Final Completion"***).

6. **Compensation**. As consideration for Program Manager's Program Management Services to be performed under this Agreement, Owner will pay Program Manager a fee (the ***"Program Management Agreement Fee"***) equal to Forty U.S. Cents ($0.40) multiplied by each Watt/dc of solar generating capacity for each System that has reached Final Completion and for which Program Manager has confirmed in a legally binding manner that such System will be covered under the Power Purchase Agreement for the term thereof.

7. **Default and Remedies**. If Program Manager defaults in the performance of any of its material covenants or obligations under this Agreement and such default continues unremedied for a period of 30 days after written notice thereof from Owner to Program Manager, Owner shall have the right, at its election, to exercise one or more of the following rights and remedies; *provided, however,* if the default is of such a nature that it cannot be cured within the 30-day period, and Program Manager has begun to cure each default within the 30-day period, Program Manager shall have an additional 60 days in which to cure said default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative); *provided, further, however,* that a default under any agreement with a contractor, subcontractor, engineer or equipment Program Manager for a System, or a delay due to action or inaction by the utility shall not be deemed a default under the Agreement:

(a) terminate this Agreement; and

(b) enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by Program Manager of the provisions of this Agreement, including court costs, reasonable attorneys' fees and other expenses incurred in the enforcement of the obligations of Program Manager hereunder; and

(c) exercise any and all rights and remedies that Owner (or its Members) may have under applicable laws and regulations; and

(d) in addition to any rights now or hereafter granted under applicable laws and regulations and not by way of limitation of any such rights, upon the occurrence of any event of default hereunder that is not cured within the time period specified in this Section 7, Owner is authorized to set off and to apply any amounts payable to Program Manager hereunder against and on account of the obligations of Program Manager to Owner hereunder.

8. **Indemnity and Liability**

(a) Limitation of Liability.

(i) Notwithstanding any provision in this Agreement to the contrary, neither Party, nor their respective Affiliates, nor any of their respective officers, directors, employees, agents, contractors, subcontractors, vendors, shareholders, members, partners or representatives, shall be liable hereunder for any consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill or any other special or incidental damages, it being understood that the Parties' indemnification obligations under this Section 8 are not and shall not be deemed to be consequential or indirect loss or damage under this Section 8.

(ii) Except as provided in this Section 8, Program Manager shall have no liability hereunder to Owner for damages or other amounts in connection with a breach by Program Manager of this Agreement or a failure by Program Manager to perform the Program Management Services in accordance with the terms and conditions hereof or otherwise as a result of the Program Management Services performed by Program Manager pursuant to this Agreement.

(iii) The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times, whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability, or breach of the Party indemnified, released or whose liabilities are limited, and shall extend to the partners, members, principals, shareholders, directors, officers, employees and agents of each Party and its Affiliates.

(b) Indemnity. To the extent it may lawfully do so, each of Program Manager and Owner hereby indemnify, defend (with counsel of its choosing), and hold harmless the other party and its directors, agents, officers, members, employees and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected to: bodily injury, death, personal injury, or property damage caused by negligence, creation or maintenance of a dangerous condition of property, or intentional infliction of harm, including any workers' compensation suits, liability, or expense, arising from or connected with Program Management Services performed by on behalf of the indemnifying party by any person pursuant to this Agreement; nonpayment for labor, materials, appliances, teams, or power, performed on, or furnished or contributed to the Site. Notwithstanding the above, neither Program Manager nor Owner shall be required to defend, indemnify and hold harmless the other for such other party's negligent acts and omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

9. **Notices.** Any notice, request, demand or other communication which is required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of receipt by the applicable Party if personally delivered; (ii) when transmitted by the applicable Party if transmitted by telecopy, electronic mail, or other digital transmission method, subject to the sender's facsimile machine receiving the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile or electronic mail message; and (iii) when received by the applicable Party, if sent for next day delivery to a domestic address by recognized overnight delivery service or, if sent by certified or registered mail, return receipt requested.

Notices shall be given:

If to Owner, to:

Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

If to Program Manager, to:

Energy for Palmdale's Independent Choice
38300 Sierra Highway
Palmdale, CA 93550
Attn: Contract Administration
Email: rperez@cityofpalmdale.org

10. **General Provisions**.

(a) No Agency Relationship. This Agreement does not create an agency relationship between the Parties and does not establish a joint venture or partnership between the parties. Except as expressly set forth herein, neither party has the authority to bind the other party or represent to any person that the party is an agent of the other party.

(b) Agreement. This Agreement consists of the terms and conditions set forth herein, as well as the appendices hereto, which are incorporated by reference herein and made part hereof. In the event of a conflict, variation or inconsistency between the appendices hereto and the terms and conditions contained in the body of this Agreement, the latter shall control and be given priority.

(c) Relationship of the Parties.

(i) Program Manager has been retained by Owner as an independent contractor to solely perform the Program Management Services on behalf of Owner.

(ii) Without limiting the relationship of any Party under any other agreement, nothing contained or implied in this Agreement shall constitute or be deemed to constitute any Party as the partner of any other Party for any purpose whatsoever; or create, or be deemed to create, any partnership between any Party and the any other Party.

(iii) No Party shall by virtue of this Agreement have the power or authority to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the any other Party as to any matter or thing to be done in relation to a System or to the provision of the Program Management Services save as may be expressly authorized in this Agreement or agreed in writing between the Parties from time to time.

(d) Entire Agreement. This Agreement, the Schedules and Exhibits attached hereto contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings and agreements. Neither Party will be bound by or deemed to have made in connection herewith any representations, warranties, commitments or undertakings, except those contained herein.

(e) Captions; Exhibits. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision

hereof. All exhibits and appendices attached hereto shall be considered a part hereof as though fully set forth herein.

(f) Amendment. This Agreement may not be amended or modified in any way unless such amendment or modification is in writing signed by duly authorized representatives of each Party.

(g) No Waivers. It is understood and agreed that any delay, waiver or omission by Owner or Program Manager to exercise any right or power arising from any breach or default by Owner or Program Manager with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by Owner or Program Manager of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or Program Manager. No waiver of any right or power by any Party under this Agreement shall be deemed effective unless in writing and signed by the waiving Party.

(h) Changed Conditions; Invalidity. If there is an occurrence of an event of Force Majeure, there is a material change in market conditions affecting the prices of goods and Program Management Services constituting Development Costs, there is a change in any Project Document or financing document or Owner enters into a new Project Document or financing document affecting performance of the Program Management Services hereunder, or there is a change in any applicable Law, and any such performance or occurrence results in increased or decreased costs to Program Manager, or Owner, as the case may be, shall be entitled to an equitable budget adjustment reflecting the reasonable value of any such increased or decreased costs from such performance or occurrence, and the Parties hereby agree to adjust equitably such other provisions of this Agreement that are directly affected by such performance or occurrence; provided, however, that such adjustments must be consistent with the economic expectations and the intent of the Parties. The invalidity or unenforceability for public policy or other equitable grounds of any provision of this Agreement shall be determined only by a court of competent jurisdiction, and the Parties hereby agree to negotiate an equitable adjustment to the invalid or unenforceable provisions with a view toward affecting the purposes of this Agreement. The validity or enforceability of the remaining provisions or portions or applications hereof shall not be affected thereby.

(i) Representations and Warranties.

(i) Each Party represents and warrants to the other that:

(A) it is duly formed and validly existing under the laws of its jurisdiction of formation;

(B) it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this Agreement;

(C) all corporate or company action required by it validly and duly to authorize the execution and delivery of, and to exercise its rights and perform its obligations under, this Agreement has been duly taken; and

(D) this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms.

(ii) Except as expressly provided in this Agreement or as required by law, no Party makes any warranties or guarantees to the other, either express or implied, with respect to the Facility, the Program Management Services or any other subject matter of this Agreement, and, to the extent permitted by law, each Party disclaims and waives any implied warranties or warranties imposed by law.

(j) Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by the Parties and each counterpart shall be deemed an original instrument as against any Party who has signed it.

(k) Facsimile or Electronic Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

(l) Dispute Resolution. In the event a dispute arises between the Parties regarding the application or interpretation of this Agreement, the aggrieved Party shall promptly notify the other Party of its intent to invoke this dispute resolution procedure within ten (10) Business Days after such dispute arises. If the Parties shall fail to resolve the dispute within ten (10) Business Days after delivery of such notice, each Party shall, within five (5) Business Days thereafter, nominate a senior officer of its management to meet at the Facility, or at any other mutually agreed location, to resolve the dispute. If the dispute remains unresolved within ten (10) Business Days after such a meeting has commenced, each Party, without further delay, shall have the right to pursue any and all remedies available at law or in equity. The pendency of any dispute under this Agreement shall not of itself relieve any Party of any duty to perform under this Agreement.

(m) Non-Recourse. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any of the partners, members, shareholders, or affiliates of the Parties, or any of their respective directors, officers, employees, agents or representatives, (each, a ***"Protected Person"***) for the payment of any amounts due or the performance of any other obligation of any Party under this Agreement. Each Party shall look solely to the assets of the other Parties for the satisfaction of each and every right or remedy under or in connection with this Agreement. In furtherance of the foregoing, Owner and Program Manager each agrees that it shall neither seek or obtain, nor be entitled to seek or obtain, any deficiency or other judgment against any Protected Person for any action or inaction under or in connection with this Agreement, and Owner and

Program Manager each releases all such Protected Persons from any such claims by Program Manager or Owner, as the case may be.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Program Management Services Agreement as of the date first written above.

PROGRAM MANAGER:

City of Palmdale,
a California municipal corporation,
d/b/a Energy for Palmdale's Independent Choice

By: _____
Name: _____
Title: _____

OWNER:

Participate.Energy LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

<u>EXHIBIT A</u>

PROGRAM MANAGEMENT SERVICES SCHEDULE

Program Management Services generally include all activities necessary or helpful to

(a) monitor and support and all permitting activities for any System;

(b) prepare materials and conduct communications and outreach to residential electric power customer in its service territory to promote the Program and to encourage the installation of Systems by its customers.

(c) create a streamlined and integrated System permitting process allowing for faster System permitting;

(d) effectively communicate with and guide Installer through the System permitting process to ensure shorter permitting timelines and to avoid any permitting delays;

(e) Effectively coordinate the System permitting process with all other governmental agencies involved;

(f) To the extent legally permissible and reasonable, expedite permitting for any System

PROGRAM SUPPORT AGREEMENT

This Program Support Agreement (this "***Agreement***") dated effective as of December 1, 2022, (the "***Effective Date***") is by and between **CITY OF PALMDALE, A CALIFORNIA MUNICIPAL CORPORATION, D/B/A ENERGY FOR PALMDALE'S INDEPENDENT CHOICE** ("***Member***"), and **Participate.Energy LLC**, a Delaware limited liability company (the "***Owner***"). The parties hereto are sometimes herein referred to individually as a "***Party***" and collectively as the "***Parties***".

RECITALS

A. Member, Owner and Tesla, Inc. (***"O&M Provider"***) have entered into certain agreements for the creation of a distributed solar and energy storage program for residential electricity customers in Member's service territory (the ***"Program"***). Under the terms of the Program, Owner will develop, finance, and own residential solar and energy storage systems to be located at private residences within Member's service territory (each a ***"System"*** or, collectively, the ***"Systems"***), O&M Provider will operate and maintain the Systems under an O&M Contract between O&M Provider and Owner (the ***"O&M Contract"***), Member will buy from Owner the energy and certain energy attributes and benefits generated by each System under the terms of a certain power purchase agreement between the Parties of even date herewith (the ***"Power Purchase Agreement"***), and sell the electric power generated by a System to the residential customer in Member's service territory, where the System is located (the ***"Customer"***).

B. Member and Owner intend that Systems will be added to this Agreement and the Power Purchase Agreement from time to time during the term of the Power Purchase Agreement.

C. Owner does not independently maintain the internal capability to perform the Program Support Services (as defined below) that Owner requires in connection with the operation and maintenance of the Systems, and Member's capabilities are expected to provide significant benefits to Owner. Therefore, Owner desires to engage Member to support certain aspects of the Systems operations and management as further set forth herein (the ***"Program Support Services"***).

D. In consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

AGREEMENT

In consideration of the above recitals, the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Appointment and Term; Assumption of Development Responsibilities; Standard of Performance**. Owner hereby appoints Member to render the Program Support Services as further described in the *Schedule of Program Support Services* attached hereto as Exhibit A. Member hereby accepts such appointment. The term of this Agreement shall be co-terminus with the term of the Power Purchase Agreement (***"Term"***). Member shall use such

diligence, care and prudence in the performance of its obligations hereunder as are commercially reasonable, and shall devote such time, effort and skills of its personnel as reasonably possible.

2. **Standard of Conduct.**

a) Member shall provide the Program Support Services, perform its other obligations and exercise its rights or powers under this Agreement in a prudent manner, and in accordance with: (i) any applicable laws and regulations and permits; and (ii) any agreement, instrument or other document to which Owner is a party, and that Owner has delivered to Member, that relates to the development, construction, Owner or a System or any component thereof (***"System Documents"***), except to the extent Owner provides Member with written instructions not to do so in the event Owner is contesting in good faith the validity or application of any such applicable laws and regulations or such term and condition of a System Document, in any reasonable manner.

b) Member may, at any time, if it reasonably considers it to be necessary or appropriate, request written instruction from Owner with respect to any matter contemplated by this Agreement and may defer action thereon pending the receipt of such written instructions.

c) Member shall advise Owner promptly, if it becomes aware of any material inconsistency between any of the following:

(i) Owner's instructions given in accordance with this Agreement from time to time;

(ii) any System Document;

(iii) required insurance (if any); and

(iv) any applicable laws and regulations or permit.

d) Any action taken by Member in accordance with the written instructions of Owner, or failure to act pending the receipt of such written instructions, shall be deemed to be within the scope of Member's authority and in accordance with its obligations under this Agreement and, without limitation, shall not constitute gross negligence or willful misconduct as referred in Section 7.

3. **Accounts and Records**.

(a) Member, on behalf of Owner, shall keep such books of account and other records relating to each System as may be required by applicable laws and regulations or reasonably requested by Owner in writing. All accounts and records relating to a System, including all correspondence, shall be surrendered to Owner upon demand without charge therefor.

(b) All books and records prepared or maintained by Member shall be kept and maintained at all times at secure locations accessible to Owner for audit, inspection and copying by Owner or any representative or auditor therefor or supervisory or regulatory authority upon reasonable written request.

(c) During the Term, Member shall keep Owner informed as to the status of the Program Support Services provided by Member hereunder in a frequency Member and Owner may agree to from time to time. Member shall notify Owner of any material event related to the Program Support Services provided by Member hereunder.

4. **Compensation and Payment**.

(a) As consideration for Member's Program Support Services to be performed under this Agreement, Owner will pay Member a fee (the ***"Program Support Services Fee"***) equal to (i) Two U.S. Cents ($0.02) multiplied by each Kilowatt-hour of solar energy generation for each System that has been placed into operation and for which Member has confirmed in a legally binding manner that such System will be covered under the Power Purchase Agreement for the term thereof, plus (ii) Fifteen Dollars ($15.00) per month for each Tesla Powerwall installed as part of a System that has been placed into operation and for which Member has confirmed in a legally binding manner that such System will be covered under the Power Purchase Agreement for the term thereof.

(b) The Program Support Services Fee shall become due and payable on a quarterly basis, not later than the fifteenth (15th) day after the end of each calendar quarter during the Term (each, a ***"Fee Calculation Period"***), *provided, that* payment of any Program Support Services Fee due and payable shall be limited to funds available to Owner from Net Operating Cash Flow during such Fee Calculation Period. The term ***"Net Operating Cash Flow"*** as used in this Agreement shall mean the cash proceeds received by Owner under the terms of the Power Purchase Agreement during a Fee Calculation Period, reduced by (i) actual or reasonably estimated operating and maintenance expenses for all Systems in operation at any time during such Fee Calculation Period, including, without limitation insurance expenses and reasonably estimated reserves for loses, and actual or reasonably estimated System equipment replacement costs during the Term and reserves therefore, (ii) actual or reasonably estimated income or other taxes payable by Buyer with respect to such cash proceeds (iii) preferred distributions to be made and any cash flow payable, or revenue or profit participation allocated to tax or sponsor equity investors unaffiliated with Owner in accordance with the terms and conditions of the then current charter documents of Owner, and (iv) payment of all obligations, including without limitation payment of principal and interest, under any loan document binding Owner at any time during such Fee Calculation Period, or for which any System operating at any time during such Fee Calculation Period has been placed as collateral.

(c) Together with any Program Support Services Fee payment, Owner shall provide Member a written accounting for the Program Support Fee due in reasonable detail. In addition, if payment for a Fee Calculation Period is reduced to available funds for payment for the respective Fee Calculation Period in accordance with Section 4(b), above, Owner shall provide Member a written accounting in reasonable detail supporting any fee reduction during such Fee Calculation Period.

(d) Any portion of the Program Support Services Fee reduced during one Fee Calculation Period in accordance with Section 4(b), above, shall be added to the Program Support Services Fee becoming due and payable in the following Fee Calculation Period subject,

however, to availability funds from Net Operating Cash Flow during such following Fee Calculation Period.

(e) To facilitate payment and verification, Owner shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by applicable laws and regulations. Upon fifteen (15) days' Notice to Owner, Member shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

(f) Payment adjustments shall be made if Owner or Member discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 4(h), or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment under the Power Purchase Agreement. If the required adjustment is in favor of Owner, Owner's quarterly Program Support Services Fee payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Member, Member shall add the adjustment amount to Owner's next quarterly Program Support Fee payment obligation, subject, however, to the limitations set forth in Section 4(b), above.

(g) If a payment due date under Section 4(b), above, falls on a weekend or legal holiday, such due date shall be the next business day. Payments made after the due date will be considered late and will bear interest on the unpaid balance, except, however, any payment reduction applied during a Fee Calculation Period, if paid during the next available Fee Calculation Period during which funds available to Owner from Net Operating Cash Flow first allow payment of the reduced amount. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to 10% (the ***"Interest Rate"***) of the total amount due. If the due date occurs on a day that is not a business day, the late payment charge shall begin to accrue on the next succeeding business day. The payment of any late payment fee by Owner shall be subject to availability of funds from Net Operating Cash Flow.

(h) A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) business days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such

overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 4(h) within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not disputed within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

5. **Default and Remedies**. If either Party defaults in the performance of any of its material covenants or obligations under this Agreement and such default continues unremedied for a period of (a) ten (10) days, in case of any monetary default, or (b) thirty (30) days in case of non-monetary default, in each after written notice thereof from the non-defaulting Party to the defaulting Party, the non-defaulting Party shall have the right, at its election, to exercise one or more of the following rights and remedies; *provided, however,* if a non-monetary default is of such a nature that it cannot be cured within said thirty (30) day period, and the defaulting Party has begun to cure each default within the 30-day period, the defaulting Party shall have an additional 60 days in which to cure said default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative); *provided, further, however,* that a default under any agreement with a contractor, subcontractor, engineer or equipment manager for a System, or a delay due to action or inaction by the utility shall not be deemed a default under the Agreement:

(a) terminate this Agreement; and

(b) enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by the defaulting Party of the provisions of this Agreement, including court costs, reasonable attorneys' fees and other expenses incurred in the enforcement of the obligations of the Defaulting Party hereunder; and

(c) exercise any and all rights and remedies that the non-defaulting Party may have under applicable laws and regulations; and

(d) in addition to any rights now or hereafter granted under applicable laws and regulations and not by way of limitation of any such rights, upon the occurrence of any event of default hereunder that is not cured within the time period specified in this Section 5, the non-defaulting Party is authorized to set off and to apply any amounts payable to the defaulting Party hereunder against and on account of the obligations of defaulting Party to the non-defaulting Party hereunder.

6. **Indemnity and Liability**

(a) Limitation of Liability.

(i) Notwithstanding any provision in this Agreement to the contrary, neither Party, nor their respective Affiliates, nor any of their respective officers, directors, employees, agents, contractors, subcontractors, vendors, shareholders, members, partners or representatives, shall be liable hereunder for any consequential or indirect loss or damage,

including loss of profit, cost of capital, loss of goodwill or any other special or incidental damages, it being understood that the Parties' indemnification obligations under this Section 6 are not and shall not be deemed to be consequential or indirect loss or damage under this Section 6.

(ii) Except as provided in this Section 6, Member shall have no liability hereunder to Owner for damages or other amounts in connection with a breach by Member of this Agreement or a failure by Member to perform the Program Support Services in accordance with the terms and conditions hereof or otherwise as a result of the Program Support Services performed by Member pursuant to this Agreement.

(iii) The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times, whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability, or breach of the Party indemnified, released or whose liabilities are limited, and shall extend to the partners, members, principals, shareholders, directors, officers, employees and agents of each Party and its Affiliates.

(b) Indemnity. To the extent it may lawfully do so, each of Member and Owner hereby indemnify, defend (with counsel of its choosing), and hold harmless the other party and its directors, agents, officers, members, employees and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected to: bodily injury, death, personal injury, or property damage to the extent caused by negligence, creation or maintenance of a dangerous condition of property, or intentional infliction of harm, including any workers' compensation suits, liability, or expense, arising from or connected with Program Support Services performed by on behalf of the indemnifying party by any person pursuant to this Agreement; nonpayment for labor, materials, appliances, teams, or power, performed on, or furnished or contributed to the Site. Notwithstanding the above, neither Member nor Owner shall be required to defend, indemnify and hold harmless the other for such other party's negligent acts and omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

7. **Notices.** Any notice, request, demand or other communication which is required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of receipt by the applicable Party if personally delivered; (ii) when transmitted by the applicable Party if transmitted by telecopy, electronic mail, or other digital transmission method, subject to the sender's facsimile machine receiving the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile or electronic mail message; and (iii) when received by the applicable Party, if sent for next day delivery to a domestic address by recognized overnight delivery service or, if sent by certified or registered mail, return receipt requested.

Notices shall be given:

If to Owner, to:

Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

If to Member, to:

Energy for Palmdale's Independent Choice
38300 Sierra Highway
Palmdale, CA 93550
Attn: Contract Administration
Email: rperez@cityofpalmdale.org

8. **General Provisions**.

(a) No Agency Relationship. This Agreement does not create an agency relationship between the Parties and does not establish a joint venture or partnership between the parties. Except as expressly set forth herein, neither party has the authority to bind the other party or represent to any person that the party is an agent of the other party.

(b) Agreement. This Agreement consists of the terms and conditions set forth herein, as well as the appendices hereto, which are incorporated by reference herein and made part hereof. In the event of a conflict, variation or inconsistency between the appendices hereto and the terms and conditions contained in the body of this Agreement, the latter shall control and be given priority.

(c) Relationship of the Parties.

(i) Member has been retained by Owner as an independent contractor to solely perform the Program Support Services on behalf of Owner.

(ii) Without limiting the relationship of any Party under any other agreement, nothing contained or implied in this Agreement shall constitute or be deemed to constitute any Party as the partner of any other Party for any purpose whatsoever; or create, or be deemed to create, any partnership between any Party and the any other Party.

(iii) No Party shall by virtue of this Agreement have the power or authority to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the any other Party as to any matter or thing to be done in relation to a System or to the provision of the Program Support Services save as may be expressly authorized in this Agreement or agreed in writing between the Parties from time to time.

(d) Entire Agreement. This Agreement, the Schedules and Exhibits attached hereto contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings and agreements. Neither Party will be bound by or deemed to have made in connection herewith any representations, warranties, commitments or undertakings, except those contained herein.

(e) Captions; Exhibits. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto shall be considered a part hereof as though fully set forth herein.

(f) Amendment. This Agreement may not be amended or modified in any way unless such amendment or modification is in writing signed by duly authorized representatives of each Party.

(g) No Waivers. It is understood and agreed that any delay, waiver or omission by Owner or Member to exercise any right or power arising from any breach or default by Owner or Member with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by Owner or Member of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or Member. No waiver of any right or power by any Party under this Agreement shall be deemed effective unless in writing and signed by the waiving Party.

(h) Changed Conditions; Invalidity. If there is an occurrence of an event of Force Majeure, there is a material change in market conditions affecting the prices of goods and Program Support Services constituting Development Costs, there is a change in any Project Document or financing document or Owner enters into a new Project Document or financing document affecting performance of the Program Support Services hereunder, or there is a change in any applicable Law, and any such performance or occurrence results in increased or decreased costs to Member, or Owner, as the case may be, shall be entitled to an equitable budget adjustment reflecting the reasonable value of any such increased or decreased costs from such performance or occurrence, and the Parties hereby agree to adjust equitably such other provisions of this Agreement that are directly affected by such performance or occurrence; provided, however, that such adjustments must be consistent with the economic expectations and the intent of the Parties and agree to in writing by the Parties. The invalidity or unenforceability for public policy or other equitable grounds of any provision of this Agreement shall be determined only by a court of competent jurisdiction, and the Parties hereby agree to negotiate an equitable adjustment to the invalid or unenforceable provisions with a view toward affecting the purposes of this Agreement. The validity or enforceability of the remaining provisions or portions or applications hereof shall not be affected thereby.

(i) Representations and Warranties.

(i) Each Party represents and warrants to the other that:

(A) it is duly formed and validly existing under the laws of its jurisdiction of formation;

(B) it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this Agreement;

(C) all corporate or company action required by it validly and duly to authorize the execution and delivery of, and to exercise its rights and perform its obligations under, this Agreement has been duly taken; and

(D) this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms.

(ii) Except as expressly provided in this Agreement or as required by law, no Party makes any warranties or guarantees to the other, either express or implied, with respect to the System, Program Support Services or any other subject matter of this Agreement, and, to the extent permitted by law, each Party disclaims and waives any implied warranties or warranties imposed by law.

(j) Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by the Parties and each counterpart shall be deemed an original instrument as against any Party who has signed it.

(k) Facsimile or Electronic Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

(l) Dispute Resolution. In the event a dispute arises between the Parties regarding the application or interpretation of this Agreement, the aggrieved Party shall promptly notify the other Party of its intent to invoke this dispute resolution procedure within ten (10) business days after such dispute arises. If the Parties shall fail to resolve the dispute within ten (10) business days after delivery of such notice, each Party shall, within five (5) business days thereafter, nominate a senior officer of its management to meet at the facility, or at any other mutually agreed location, to resolve the dispute. If the dispute remains unresolved within ten (10) business days after such a meeting has commenced, each Party, without further delay, shall have the right to pursue any and all remedies available at law or in equity. The pendency of any dispute under this Agreement shall not of itself relieve any Party of any duty to perform under this Agreement.

(m) Non-Recourse. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed that there shall be absolutely no personal

liability on the part of any of the partners, members, shareholders, or affiliates of the Parties, or any of their respective directors, officers, employees, agents or representatives, (each, a ***"Protected Person"***) for the payment of any amounts due or the performance of any other obligation of any Party under this Agreement. Each Party shall look solely to the assets of the other Parties for the satisfaction of each and every right or remedy under or in connection with this Agreement. In furtherance of the foregoing, Owner and Member each agrees that it shall neither seek or obtain, nor be entitled to seek or obtain, any deficiency or other judgment against any Protected Person for any action or inaction under or in connection with this Agreement, and Owner and Member each releases all such Protected Persons from any such claims by Member or Owner, as the case may be.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Program Support Agreement as of the date first written above.

MEMBER:

City of Palmdale,
a California municipal corporation,
d/b/a Energy for Palmdale's Independent Choice

By: _____
Name: _____
Title: _____

OWNER:

Participate.Energy LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

<u>EXHIBIT A</u>

PROGRAM SUPPORT SERVICES SCHEDULE

1. Member shall provide Level 1 System Support for all Systems included under the Power Purchase Agreement, including without limitation maintaining and coordinating all personnel, activities, and infrastructure reasonably required for such Level 1 Support Services. ***"Level 1 Support Services"*** shall include:

    a) Provide first contact and Customer interaction for any System-related communication via email and telephone;

    b) Clarify general System functions and features via email or telephone upon receipt of Customer requests;

    c) To the extent reasonably possible by telephone or email, verify, analyze and correct System problems reported by Customers;

    d) Create incident reports, including initial analysis, for System problems that cannot be corrected by telephone or email;

    e) Forward incident reports to O&M Provider promptly upon report of any System problem that cannot be corrected by Member by telephone or email;

    f) Periodic reporting to Owner and O&M Provider of all significant System-related Customer interactions.

Multiparty Non-Disclosure Agreement

Effective Date: _____	**Tesla Contact: _____**

This Multiparty Non-Disclosure Agreement ("NDA") is entered as of the Effective Date between the Tesla entity ("Tesla") and the company(ies) and individual(s) (each, a "Company") identified below. Tesla and each Company are referred to herein as a "Party" and collectively as the "Parties." Tesla and each Company agree as follows:

1. Purpose. Any Party hereto or its Affiliates (each, a "Discloser") may disclose Confidential Information to another Party or its Affiliates (each, a "Recipient") in order to consider a potential business relationship with each other or fulfill the objectives of such relationship ("Purpose"). "Confidential Information" means information disclosed by Discloser that is marked as confidential or proprietary, identified as confidential or proprietary at the time of disclosure (e.g. if disclosed orally or visually), or disclosed under circumstances by which Recipient should reasonably understand such information is to be treated as confidential or proprietary.

2. Confidentiality. Subject to Section 4, Recipient may not: (a) use Discloser's Confidential Information for any reason except the Purpose; or (b) disclose Confidential Information to any individual or third party except to (i) its personnel, directors, consultants, professional advisors, and Affiliates, in each case that (A) have a "need to know" such Confidential Information for the Purpose and (B) are bound to confidentiality obligations that protect Confidential Information to at least the same extent as the terms of this NDA (collectively, "Authorized Recipients"), and (ii) another Party to this NDA which is informed in writing of the identity of the original Discloser with respect to such information unless the original Discloser instructed Recipient not to disclose such Confidential Information to another Party to this NDA, and upon receipt such Party shall be deemed to have received such information directly from the original Discloser and to be a Recipient. Recipient shall implement and maintain appropriate organizational, technical, and administrative security measures, exercising the same degree of care to protect Discloser's Confidential Information that it uses for its own confidential information of a similar nature, but in no event less than reasonable care. Promptly after learning of any unauthorized use or disclosure of, and/or unauthorized attempt to access or modify, any Confidential Information in Recipient's (or its Authorized Recipients') custody or control, Recipient shall notify Discloser in writing and cooperate with Discloser to investigate and mitigate any adverse effects. Recipient shall be responsible for any unauthorized use or disclosure of Confidential Information by its Authorized Recipients.

3. Separate NDAs. This NDA shall not be deemed to: (a) modify or limit any separate non-disclosure agreement between two or more Parties (each, a "Separate NDA"); or (b) permit a Party to this NDA to disclose another Party's Confidential Information without consent to any third party (e.g. under a Separate NDA or to unaffiliated third parties) or for any reason other than the Purpose, except as expressly permitted under this NDA.

4. Exceptions. The obligations of Section 2 shall not apply to information that: (a) is already known to Recipient at the time of disclosure without obligation of confidentiality, (b) is or becomes publicly known through no wrongful act or omission of Recipient, (c) is rightfully received by Recipient from a third party without obligation of confidentiality, (d) is approved for release by written authorization of Discloser, or (e) was developed by Recipient independently and without the use or benefit of any of Discloser's Confidential Information. A disclosure that Recipient is required to make pursuant to any order or requirement of a court, administrative agency, other governmental agency, or stock exchange will not be deemed a breach of Sections 2 or 6 of this NDA, provided that Recipient has to the extent permitted by law: (x) promptly notified Discloser in writing of such order or requirement, (y) given Discloser an opportunity to challenge or limit the disclosure requirement or seek an appropriate protective order, and (z) cooperated with Discloser to narrow the scope of such disclosure to only that portion of the Confidential Information that is necessary to fulfill the order or requirement. A disclosure which complies with a Federal Acquisition Regulation permitting disclosures to the government concerning government contracts will not be deemed a breach of this NDA. Each Party is hereby given notice of the immunity set forth in 18 USC § 1833(b).

5. Anonymous Data. Tesla may share de-identified or anonymous data which does not directly identify the data subject(s), such as individuals, vehicles, products, or entities. Each Company agrees that it shall not, and shall not attempt to, identify any data subject.

6. No Publicity. Each Party agrees that it may not make any public disclosures relating to the existence of this NDA or the Purpose without the other Parties' prior written consent.

7. Ownership. All Confidential Information and derivations thereof remain Discloser's sole property, and no license or other right to Confidential Information or intellectual property is granted or implied in this NDA or by any disclosure. This NDA does not require any Party to disclose any information.

8. Affiliate. "Affiliate" means an entity which either controls or is controlled by a Party or is under common control with a Party, where "control" means the power to direct or cause the direction of an entity's management and policies through ownership or control of at least 50% of its voting securities or ownership interest.

9. As-Is Disclosures. Discloser warrants that it has the right to disclose the Confidential Information to Recipient. No other warranties are made whether express, implied, or statutory. All Confidential Information is provided on an "AS IS" basis.

Discloser disclaims any and all other representations, warranties, or assurances concerning the Confidential Information, including as to accuracy, performance, completeness, suitability, or third party rights.

10. Current and Future Development. Nothing in this NDA prohibits a Party from developing, or having developed, products or services that, without violation of this NDA, compete with other Parties' products or services. No Party may be presumed to have violated this NDA solely because it uses, makes, has made, or offers products or services which compete with another Party's products or services.

11. Return or Destruction. Confidential Information, and all copies thereof, remain Discloser's property. Upon expiration or termination of this NDA or Discloser's written request, each affected Recipient shall promptly return to Discloser all documents, presentations, and other tangible items of Confidential Information or, at the request of Discloser, certify in writing that all such Confidential Information has been destroyed; provided, however, that Recipient may retain and use such Confidential Information if and to the extent permitted by a license or similar right under a separate agreement. Recipient shall also use reasonable efforts to delete all electronic copies of Confidential Information under its control. If it would be unreasonably costly or burdensome for Recipient to immediately delete copies of Confidential Information from its routinely-made backup or disaster-recovery systems, then Recipient will not be required to do so until the next regularly-scheduled destruction of such copies in the usual course of business and in compliance with a reasonable back-up retention policy adopted by Recipient, provided that such copies remain subject to the requirements of Section 2 so long as they remain in Recipient's custody or control. If data is restored to Recipient's production systems from a backup or disaster recovery system after Confidential Information was otherwise required to be returned or destroyed, Recipient must either ensure that the restoration does not include any Confidential Information which should otherwise have been returned or destroyed or, if such Confidential Information is included in the restoration, securely delete such Confidential Information promptly after the restoration.

12. Termination. This NDA is effective as of the Effective Date and will expire 3 years thereafter. Any Party may terminate its participation in this NDA for any or no reason by giving 60 days' prior written notice to the other Parties. Expiration or termination will not affect any Party's rights or obligations with respect to Confidential Information disclosed before such expiration or termination, and such rights or obligations will continue as long as Recipient has custody of or control over Confidential Information. Sections 2–7 and 10–14 hereof will survive for 5 years after the expiration or termination of this NDA.

13. Disputes; Venue. This NDA is governed by the laws of the county, state, and country specified below Tesla's signature, in each case without regard to conflict of laws principles. Each Party will be jointly and severally responsible for the acts and omissions of its Affiliates and each of their respective Authorized Recipients. The rights of and damages incurred by a Party's Affiliate will be deemed to be rights of and damages incurred by such Party. The Parties shall discuss in good faith a resolution to any conflict or dispute under this NDA. The exclusive venue for any judicial action arising out of or relating to this NDA will be the state, federal, or regional courts for the location specified below Tesla's signature. The Parties, for themselves and their respective Affiliates and Authorized Recipients, hereby waive any challenge to venue and jurisdiction in such courts.

14. Miscellaneous. This NDA constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements, representations, and understandings between the Parties regarding its subject matter. If any provision hereof is held by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this NDA shall remain in full force and effect. This NDA is written in the English language, and the English version shall prevail over any translation thereof. A waiver of any right hereunder does not imply a waiver of any other rights. No waiver, alteration, modification, or amendment of this NDA shall be effective unless in writing and signed by all Parties. This NDA may be signed in duplicate originals or in separate counterparts, each of which is effective as if the Parties signed a single original, and a facsimile of an original signature or electronically-signed version transmitted to the other Parties is effective as if the original was sent to the other Parties. Any notice required or permitted by this NDA shall be made in writing and be deemed delivered upon verification of delivery to the other Parties. Each Party agrees that it shall not assign, transfer, or otherwise convey or delegate any of its rights or duties under this NDA (except to the successor in a merger, acquisition, or corporate reorganization of the assigning Party or, in the case of Tesla, to Tesla, Inc.) without the other Parties' prior written consent, and any attempt to do so shall be void.

Multiparty Non-Disclosure Agreement

Tesla and each Company execute this Multiparty Non-Disclosure Agreement through their duly authorized representatives.

Tesla: **Tesla, Inc.**

Signed:

Printed:

Title:

Date:

Contact Information:
Legal Department
PO Box 15430, Fremont CA 94539, USA
Phone : +1-650-681-5000
Governing Law: California
Venue: Santa Clara County, California

Company: Participate.Energy LLC

Signed:

Printed: Ethan Friedman

Title: Managing Director

Date:

Contact Information:
Name/Dept.: Ethan Friedman
Address: 2093 Philadelphia Pike,Claymont, DE 19703
Phone: 917 301 2621

Company:

Signed:

Printed:

Title:

Date:

Contact Information:
Name/Dept.:
Address:
Phone:

Company:

Signed:

Printed:

Title:

Date:

Contact Information:
Name/Dept.:
Address:
Phone: