

AGENDA
REGULAR JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF DUARTE,
CITY COUNCIL AS SUCCESSOR AGENCY TO DISSOLVED
REDEVELOPMENT AGENCY OF CITY OF DUARTE,
AND DUARTE HOUSING AUTHORITY

TUESDAY, JUNE 26, 2012

6:30 p.m. – Closed Session

7:00 p.m. – Regular Session

COUNCIL CHAMBERS, 1600 HUNTINGTON DRIVE, DUARTE, CALIFORNIA 91010

MISSION STATEMENT

With integrity and transparency, the City of Duarte provides exemplary public services in a caring and fiscally responsible manner with a commitment to our community's future

MAYOR/HOUSING AUTHORITY CHAIR JOHN FASANA
MAYOR PRO TEM/HOUSING AUTHORITY VICE CHAIR LIZ REILLY
COUNCILMEMBER/HOUSING AUTHORITY BOARD MEMBER MARGARET FINLAY
COUNCILMEMBER/HOUSING AUTHORITY BOARD MEMBER TZEITEL PARAS-CARACCI
COUNCILMEMBER/HOUSING AUTHORITY BOARD MEMBER PHIL REYES

City/Authority Staff:

Darrell George, City Manager/Housing Authority Executive Director
Kristen Petersen, Assistant City Manager/Housing Authority Assistant Executive Director
and Director of Administrative Services
Craig Hensley, Community Development Director
Cesar Monsalve, Director of Parks and Recreation
Brian Villalobos, Director of Public Safety Services
Dan Slater, City Attorney/Housing Authority General Counsel
Marla Akana, City Clerk

ADDRESSING THE CITY COUNCIL AND HOUSING AUTHORITY:

If you wish to address the City Council or Housing Authority on any item on the Agenda, you should fill out a Speaker Card indicating which item or items on the Agenda you wish to speak about, and hand the card to the City Clerk. You will be called to the Podium when that item is heard by the City Council/Authority. If you wish to address the City Council or Housing Authority on any item that is not on the Agenda, but that is within the subject matter jurisdiction of the City or Authority, you may do so under the "Oral Communications" portion of the Agenda. At the podium, before starting your remarks, please state your name and city of residence for the record.

ADA ACCESSIBILITY NOTICE:

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, you should contact the City Manager's office at (626) 357-7931. Notification no later than 1:00 p.m. on the day preceding the meeting will enable the City to make reasonable arrangements to assist your accessibility to this meeting.

Note: Any documents distributed by the City/Authority to a majority of the City Council/Housing Authority Board less than 72 hours prior to the City Council/Authority meeting will be made available for public inspection at City Hall, 1600 Huntington Drive, Duarte, CA 91010, during normal business hours, except such documents that relate to closed session items or which are otherwise exempt from disclosure under applicable law.

THE FOLLOWING ITEMS WILL BE HEARD AT 6:30 P.M.

1. CALL TO ORDER OF CITY COUNCIL AND HOUSING AUTHORITY, AND NOTATION OF ANY ABSENCES
2. ADOPTION OF THE AGENDA
3. CLOSED SESSION
 - A. Public Input – *Members of the public wishing to speak concerning the closed sessions listed below may do so at this time. Each person may speak once for no more than 3 minutes.*
 - B. Conference with Legal Counsel – Existing Litigation pursuant to Government Code Section 54956.9(a); *KUA Industry, Inc., a California corporation; U.S. Kuil, Inc., a California corporation, Petitioners and Plaintiffs v. City of Duarte, a California municipality; City Council of the City of Duarte, specifically “John Fasana, Margaret Finlay, Tzeitel Paras-Caracci, Lois Gaston, and Phil Reyes;” City of Duarte Redevelopment Agency, an agency of a California municipality; and Does 1 – 500; inclusive, Respondents and Defendants; Los Angeles County Superior Court, Case No. BS123299, and enforcement of nuisance abatement judgment against successor-in-interest AMG Duarte LLC, a California limited liability company, for recovery of attorney fees and costs*

THE FOLLOWING ITEMS WILL BE HEARD NOT EARLIER THAN 7:00 P.M.

4. PLEDGE TO THE FLAG
5. MOMENT OF REFLECTION
6. FITNESS/MENTAL WARM-UP
7. PUBLIC REPORT OF CLOSED SESSION ITEM
8. SPECIAL ITEMS – Page 1
 - A. Recognition – Agnes Trail, 90th Birthday
 - B. Recognition – Jr. Olympics Track Program participants
 - C. Presentation by Cynthia Kurtz, San Gabriel Valley Economic Partnership – Overview of the San Gabriel Valley economy
 - D. Public Safety update
9. ANNOUNCEMENTS OF UPCOMING COMMUNITY EVENTS
Any person who wishes to make a brief announcement of a future community event that is open to the general public may do so at this time.
10. ORAL COMMUNICATIONS—ITEMS NOT ON THE AGENDA (30 MINUTES)
Any person wishing to speak on any issue that is not on the Agenda, but that is within the subject matter jurisdiction of the City or Authority, may do so at this time. The opportunity to speak is on a first come, first serve basis. Each person may speak once for no more than 3 minutes and there is a maximum of 30 minutes for all Oral Communications at this time. Under the Brown Act, members of the City Council, Authority, and staff can respond only with a brief reply to issues raised in Oral Communications, and no action on such matters may take place at this meeting.
11. ITEMS TO BE ADDED TO THE CONSENT CALENDAR (City Council/Housing Authority)
12. CONSENT CALENDAR (City Council/Housing Authority) – Page 3
All matters listed on the Consent Calendar are to be approved with one motion unless a member of the City Council/Authority removes an item for separate action. Any consent calendar item for which separate action is requested shall be heard as the next Agenda item.
 - A. City Council/Housing Authority – Approval of Minutes – June 12, 2012
 - B. City Council/Housing Authority – Approval of Warrants – June 26, 2012
 - C. City Council/Housing Authority – Motion to introduce and/or adopt all resolutions and ordinances presented for consideration by title only and waive further reading
 - D. Review of declaration of local emergency declared on December 5, 2011, due to wind storm, and determination of need to continue declaration of local emergency, pursuant to Government Code Section 8630(c)

- E. Council Bill 12-R-17 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE DESIGNATING THE GRANTEE'S AGENT FOR ALL MATTERS RELATING TO THE 2012/13 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, NETWORK FOR A HEALTHY CALIFORNIA LOCAL INCENTIVE AWARDS
 - F. Council Bill 12-R-19 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ADOPTING A FUND BALANCE POLICY FOR THE GENERAL FUND
 - G. 1) Approval of Re-Entered 1987 Amended Davis Agreement/Promissory Note between the City of Duarte, a municipal corporation, and the City of Duarte in its capacity as Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte
2) Approval of Re-Entered 1991 Hamilton Promissory Note between the City of Duarte, a municipal corporation, and the City of Duarte in its capacity as Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte
3) Approval of Re-Entered 1991 Rancho Duarte Phase III Promissory Note between City of Duarte, a municipal corporation, and the City of Duarte in its capacity as Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte
 - H. Authority Bill 12-H-01 A RESOLUTION OF THE DUARTE HOUSING AUTHORITY APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE DUARTE HOUSING AUTHORITY AND SOUTHERN CALIFORNIA PRESBYTERIAN HOMES (SCPH)
 - I. Recommendation to approve Amendment No. 1 to the Services Agreement by and between the City of Duarte and Levon Yotnakhparian for City Council Meeting cablecasting and Internet viewing
 - J. Recommendation to approve Agreement for Professional Services with Barrow/Hoffman Public Relations for public relations services, effective July 1, 2012 – June 30, 2013
 - K. Recommendation to approve Services Agreement by and between the City of Duarte and the Duarte Chamber of Commerce, effective July 1, 2012 – June 30, 2013
 - L. Recommendation to approve Building Lease by and between the City of Duarte and the Duarte Chamber of Commerce, effective July 1, 2012 – June 30, 2013
 - M. Concurrence by City Council of the appointment of Cesar Monsalve as new Parks and Recreation Director, pursuant to Duarte Municipal Code Section 2.12.090(c)
 - N. Adoption of FPPC Form 806 – Agency Report of Public Official Appointments
 - O. Acceptance of Asbestos Abatement and Site Clearance at 1415 Huntington Drive (American Wrecking, Inc.) and authorization for City Clerk to initiate the Notice of Completion
 - P. City Council/City Manager Conference Attendance
13. ITEMS REMOVED FROM CONSENT CALENDAR (City Council/Housing Authority)
14. ITEMS TO BE ADDED TO THE CONSENT CALENDAR (City Council as Successor Agency to Redevelopment Agency)
15. CONSENT CALENDAR (City Council as Successor Agency to Redevelopment Agency)
- A) Approval of Re-Entered 1987 Amended Davis Agreement/Promissory Note between the City of Duarte, a municipal corporation, and the City of Duarte in its capacity as Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte
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 - C) Approval of Re-Entered 1991 Rancho Duarte Phase III Promissory Note between City of Duarte, a municipal corporation, and the City of Duarte in its capacity as Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte

16. ITEMS REMOVED FROM CONSENT CALENDAR (City Council as Successor Agency to Re-development Agency)
17. PUBLIC HEARINGS – Page 93
 - A. 12-R-18 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE AUTHORIZING THE EXCHANGE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR GENERAL FUNDS FROM THE CITY OF TORRANCE FOR FISCAL YEAR 2012-2013
 - B. 12-R-21 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ADOPTING A FEE SCHEDULE FOR THE RENTAL OF THE DUARTE TEEN CENTER AND FOR RENTAL OF PARK GAZEBOS AT CITY PARKS
18. COUNCIL BILLS – Page 112
 - A. 12-O-03 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE AMENDING CHAPTERS 6.20 AND 9.20 OF THE DUARTE MUNICIPAL CODE PERTAINING TO THE REGULATING AND PROHIBITING OF SMOKING (First Reading)
 - B. 1) 12-O-04 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE AMENDING PORTIONS OF CHAPTER 5.40 OF THE DUARTE MUNICIPAL CODE PERTAINING TO MOTION PICTURES, TELEVISION, AND RADIO BROADCASTING (First Reading)

2) 12-R-20 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE ADOPTING FILMING RULES AND GUIDELINES
19. BUSINESS ITEMS – Page 139
 - A. Appointments to Mayor’s Youth Council
 - B. Request for City Council direction regarding grant writing options for the City of Duarte
20. CONTINUATION OF ORAL COMMUNICATIONS
*Any person who did **not** speak during the initial 30 minute Oral Communications period earlier in the meeting, who wishes to speak on any issue that is not on the Agenda but that is within the subject matter jurisdiction of the City or Authority, may do so at this time. Each person may speak once for no more than 3 minutes. Under the Brown Act, the City Council, Authority, and staff can respond only with a brief reply to issues raised in Oral Communications and no action on such matters may take place at this meeting.*
21. ITEMS FROM CITY COUNCIL/AUTHORITY MEMBERS AND CITY MANAGER/EXECUTIVE DIRECTOR (AB 1234 reports on trips, conference attendance, and meetings)
22. ADJOURNMENT – In memory of Patricia Wilkerson

MEMORANDUM

TO: City Council
FROM: City Manager
DATE: June 21, 2012
SUBJECT: Comments on Agenda Items, Meeting of June 26, 2012

ITEM 8.A. The City Council will recognize Agnes Trail on the occasion of her 90th birthday. The Trail family settled in Duarte in 1963. The three youngest Trail children went through the Duarte school system, attending Beardslee Elementary, Andres Duarte Elementary, Northview School, and each graduated from Duarte High School. Agnes was actively involved in her children's school activities and sporting events. Now that her daughter, Michelle Trail, works at Duarte High School, you can still see Agnes walking around seeing what she can do to help. She was the person standing beside Jim Trail as they both volunteered time for the Duarte High School Booster Club, Booster Band Aides, and she enjoyed being "Mom" to all her children's friends. Agnes is currently residing in Glendora, but her heart remains in Duarte. She still has her post office box in Duarte and her daughter, Melodie Valenzuela, still lives in Duarte. The City of Duarte is honored to celebrate Agnes Trail's 90th birthday.

ITEM 8.B. The children who qualified for the Southern California track meet have been invited to attend the City Council meeting to be recognized for their achievements. The 2012 Duarte Jr. Olympics Track Meet was held on April 14, and was a great success, with over 400 registered participants. In collaboration with the Duarte Unified School District, teams from Andres Duarte, Beardslee, Maxwell, Royal Oaks, Valley View, and Northview Schools participated in the meet held at the Duarte High School stadium. Royal Oaks School was the winner in the school competition, and 174 children who finished in first or second place in individual events and first in relay events qualified to participate in the Southern California Municipal Athletic Federation (SCMAF) – San Gabriel Valley Track and Field Championship. The San Gabriel Valley track meet was held on May 5 at Bonita High School in La Verne, and included 12 competing cities with approximately 600 athletes. Duarte's track team excelled, finishing with 14 first places. Over 40 Duarte children qualified in 56 different events for the Southern California Track and Field Championship Track Meet held on June 3 at Warren High School in Downey.

ITEM 8.C. Ms. Cynthia Kurtz, CEO of the San Gabriel Valley Economic Partnership, will provide the Council with an overview of the economic conditions here in the San Gabriel Valley. This presentation was recently provided to the full membership at its Economic Outlook Breakfast on April 24.

ITEM 8.D. The Director of Public Safety will give his monthly update on public safety matters throughout the City.

ITEM 12.D (Consent Calendar). The local emergency declared on December 5, 2011, due to the wind storm, will need to be continued due to remaining work related to landscaping clean up.

ITEM 12.E (Consent Calendar). This is a resolution for consideration to execute all documents relating to the 2012/13 California Department of Public Health, Network for a Healthy California Local Incentive Award. For the past 12 years, the City of Duarte Parks and Recreation Department has been the recipient of a Local Incentive Award through the California Department of Public

Health to provide nutrition education to low-income residents. Our current award will conclude on September 30, 2012. The City of Duarte Parks and Recreation Department has been offered a one-year extension that will conclude on September 30, 2013. In order to accept the extension, the City Council must approve the resolution.

ITEM 12.G and 15 (Consent Calendars). Legal Counsel is recommending the Successor Agency re-enter into three agreements that were recently rejected by the Department of Finance as enforceable obligations: 1) the Amended Davis Promissory Note, 2) the Hamilton Promissory Note, and 3) the Rancho Duarte Phase III Promissory Note. Pursuant to Health and Safety Code Sections 34178(a) and 34180(h) [part of AB1x26], a successor entity wishing to re-enter into agreements with the City that formed the redevelopment agency may do so upon obtaining the approval of its oversight board.

Legal Counsel believes these sections of the law allow the re-entering of the three agreements listed above and authorize the Successor Agency and Oversight Board to jointly determine that such agreements should be recognized as enforceable obligations. If approved by the Successor Agency, these three re-entered agreements will be taken to the Oversight Board at its next meeting for consideration. If approved by the Oversight Board, the re-entered agreements will be listed on a revised ROPS and the revised ROPS will be submitted to the Department of Finance ("DOF") with a request that DOF determine the three re-entered agreements to be enforceable obligations. DOF likely will reject the re-entered agreements as enforceable obligations. Upon DOF's rejection, the Successor Agency will have exhausted its administrative remedies and thus would be able, if it later chooses, to pursue legal remedies to assert the re-entered agreements are enforceable obligations under Sections 34178(a) and 34180(h). As such, re-entering the three agreements obtaining the approval of the Oversight Board, and submitting the re-entered agreements to DOF, is part of the process necessary for creating and preserving the Successor Agency's additional legal argument that the re-entered agreements are enforceable obligations.

ITEM 12.H (Consent Calendar). This is a resolution of the Housing Authority to consider approving a Disposition and Development Agreement (DDA) between the Duarte Housing Authority and Southern California Presbyterian Homes (SCPH). This item is an approval of a DDA with SCPH for Andres Duarte II, the 43-unit affordable senior housing project on the southeast corner of Pops Road and Huntington Drive. The Agency unanimously approved an Option Agreement with SCPH in July 2010, and this DDA is consistent with that agreement. In the agreement, the Agency agrees to sell the property to SCPH for \$870,000 and provide \$1.2 million of financial assistance to SCPH to assist in the development of the property. Since the approval of the Option Agreement, SCPH has been granted \$7,013,000 of HUD Section 202 funds, and will be applying for State 4% tax credit funding. The City's Oversight Board approved the Option Agreement, and construction could begin by Fall 2013.

ITEM 17.A. This is a Public Hearing to consider a resolution authorizing the exchange of Community Development Block Grant (CDBG) funds for General Funds from the city of Torrance for fiscal year 2012-2013. The City of Duarte has been allocated \$143,057 in CDBG funds for fiscal year 2012-2013. The opportunity has arisen to exchange these federally restricted funds with \$95,848 in unrestricted General Fund dollars in an agreement with the City of Torrance. The City of Duarte's most recent exchange in June 2011 with La Mirada was at \$.67/\$1.00. The exchange rate (\$.67/\$1.00) is comparable to other exchanges that have occurred in other participating cities and is considered a fair exchange rate.

Typically, CDBG funds in Duarte have been used to fund housing rehabilitation grants (including lead and asbestos grants to meet federal requirements), a portion the City's code enforcement program, public service program grants, and funded a portion of the CDBG program administration. While CDBG funds are very helpful to the City and many great projects have been assisted with CDBG funds, they are funds that come with strict Federal limitations and costly monitoring requirements. Staff supports the idea of the exchange of restrictive CDBG funds for unrestricted general funds.

ITEM 17.B. This is a Public Hearing to consider a resolution adopting a fee schedule for the rental of the Duarte Teen Center and park gazebos at City parks. The rental of the Duarte Teen Center will be restricted to Saturdays and Sundays only, and rules will specify to have all activities cease by 10:00 p.m. Alcohol will not be allowed to be served or to be sold at the Teen Center during rentals. The offices, computer room, and boxing room will not be included for rent.

The park gazebos at Royal Oaks Park and Encanto Park will also be made available for rent and may also be a reliable source of revenue for the City, and will provide the residents with a means to rent facilities that have been regularly requested. At present, the use of picnic gazebos is very popular and in order to secure a picnic gazebo, residents must arrive very early at the desired location and secure their spot on a first-come basis. Residents have complained of the inconvenience of doing this if their activity doesn't take place until later in the day. When a gazebo is rented, the renter will be given an approved copy of the application form and a notice to post upon arrival, and staff will attach a second sign to the rented gazebo indicating the date and time it has been rented. There will be no changes to the parks and sports facilities usage policies, since all current rules and regulations will also apply to the gazebos.

ITEM 18.A. This is the first reading of an Ordinance to amend the Municipal Code pertaining to the regulating and prohibiting of smoking. The amendment would prohibit smoking in all public parks located in the City. Specifically, smoking will be prohibited and unlawful in public areas, including but not limited to, public sidewalks, streets, and alleys, located within 25 feet of the boundary of a public park, except for smoking in a private vehicle that is in motion on a public street or alley, unless smoking in the private vehicle is otherwise prohibited by law. A vehicle is in motion if it is moving or if it is stopped at a stop sign or red light.

ITEM 18.B. This is the first reading of an Ordinance amending the Municipal Code as it pertains to motion pictures, television, and radio broadcasting, along with a resolution adopting filming rules and guidelines. Over the past few months, staff has been working with the Los Angeles County Economic Development Corporation (LAEDC) State and Local Policy Committee to address a variety of regional business-friendly issues. One specific issue that the committee has addressed is the regional approach to the film industry. LAEDC put together a working group to develop ideas to improve the location filming process in the County. The working group included the California Film Commission, FilmLA, and numerous representatives from the film industry, along with LAEDC's State and Local Policy Committee. One of the results was a new Model Filming Ordinance and associated Guidelines for Best Practices in Film Regulations and Policies.

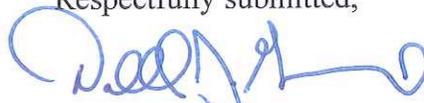
Duarte has a history of working cooperatively with the California Film Commission and the filming industry, and adopted the previous Model Filming Ordinance in 2006. Staff is recommending that the City adopt the new Model Ordinance along with the new Film Permit Rules and guidelines. Currently, the Film Permit fee is \$1,300 each day, a fee that was established in 2011. Staff is not proposing any fee changes at this time, but will analyze the appropriateness of the fees and report to Council in the future.

ITEM 19.A. This item is for the City Council to make appointments to the Mayor's Youth Council. The application and interview process to select the new members to serve on the Mayor's Youth Council was recently completed. The minimum qualifications to serve on the Council include the need to maintain a grade point average of 2.0 or better, and be a City of Duarte resident or attend school in the Duarte Unified School District. Twenty-two students applied to serve on the Council, and 16 qualified applicants were interviewed by the Duarte City Council on Tuesday, June 12.

ITEM 19.B. During the recent budget workshops, City Council directed staff to begin researching options for providing grant writing services to the City. Since this item was part of the "wish list" for the upcoming year, staff was going to bring the item to the Council at mid-year for consideration, pending the outcome of the potential revenue ballot measure vote. However, Council requested that this item return for discussion sooner rather than later, especially in light of the recent dissolution of the City's long-standing Redevelopment Agency.

Staff contacted three firms to obtain a scope of work and a cost to provide the grant writing services. The firms are eCivis, Arroyo Strategy Group, and California Consulting, LLC. Each firm has unique strategies and services to obtain grants, and all have successful track records with other cities. Staff will present the components of each of the proposals, and provide other necessary input for City Council direction.

Respectfully submitted,



Darrell J. George
City Manager



MEMORANDUM

TO: CITY MANAGER
FROM: CESAR MONSALVE, DIRECTOR OF PARKS AND RECREATION
SUBJECT: BIRTHDAY RECOGNITION
DATE: JUNE 19, 2012

This month we are happy to be celebrating a 90th birthday.

Agnes Trail

Agnes Trail was born on June 17, 1922 at home on the St. Regis Mohawk Reservation in Upstate New York. Agnes moved from the reservation once she turned eighteen to look for work in Florida. She moved back to New York and then to California.

Agnes was a single mother of three girls and her maiden name was Benedict when she met Jim Trail at General Dynamics Convair in 1951. She was making machine guns for the military and he was working in another department. They married in 1952 and raised 3 more children. Agnes became a stay at home mom while the General Dynamics Convair company moved Jim and the family to Kansas, Nebraska, New York and back to California. There was a time when Agnes had to drive all six children cross-country by herself in a car with no air conditioning.

The Trail family settled in Duarte in 1963. The three youngest Trail children went through the Duarte school system, attending Beardslee Elementary, Andres Duarte Elementary, Northview School and each graduated from Duarte High School. Even her grandchildren graduated from Duarte High School. While the children were in high school, Agnes returned to school to graduate at Pasadena City College as a CNA and Home Health Aide.

All of Agnes' children, grandchildren and great-grandchildren are raised knowing about their Native American heritage. Agnes has presented and set up displays at retired teacher luncheons, church events, social gatherings, and educational functions. Agnes has even volunteered to give interviews to high school students who were doing projects in their U.S. History classes.

Agnes Trail was actively involved in her children's school activities and sporting events. Now that her daughter, Michelle Trail, works at Duarte High School, you can still see Agnes walking around seeing what she can do to help. She was the person standing beside Jim Trail as they both volunteered time for the Duarte High School Booster Club, Booster Band Aides, and she enjoyed being "Mom" to all her children's friends.

Agnes is currently residing in Glendora but her heart remains in Duarte. She still has her post office box in Duarte and her daughter, Melodie Valenzuela, still lives in Duarte. Agnes keeps busy being a Mom, Grandma, and Great-Grandma. She is the maternal strength of the Trail family. The City of Duarte is honored to celebrate Agnes Trail's 90th birthday.



MEMORANDUM

TO: CITY COUNCIL

FROM: CESAR MONSALVE, DIRECTOR OF PARKS AND RECREATION

SUBJECT: JUNIOR OLYMPICS TRACK PROGRAM

DATE: JUNE 14, 2012

The 2012 Duarte Junior Olympics Track Meet was held on April 14 and was a great success with over 400 registered participants. In collaboration with the Duarte Unified School District, teams from Andres Duarte, Beardslee, Maxwell, Royal Oaks, Valley View, and Northview Schools participated in the meet held at the Duarte High School stadium. Each school assigned schoolteachers to organize their team and all of the teachers proved to be dedicated and worked hard for their students. Royal Oaks School was the winner in the school competition, and 174 children who finished in 1st or 2nd place in individual events, and 1st in relay events qualified to participate in the Southern California Municipal Athletic Federation (SCMAF) – San Gabriel Valley Track and Field Championship Meet that was held on May 5th.

The week after the Duarte Junior Olympics Track Meet was held, the Recreation Department began offering practices for the qualifying children to prepare for San Gabriel Valley and SCMAF track meets. The practices were optional for children to work on improving their performances for the next meet and were conducted by Recreation Leaders Nick Jackson, Zequoia Williams, and Mario Ortega.

The San Gabriel Valley track meet that was held on May 5th at Bonita High School in La Verne included twelve competing cities with approximately 600 athletes. Duarte's track team excelled, finishing with 14 first places. Over 40 Duarte children qualified in 56 different events for the Southern California Track and Field Championship Track Meet held on June 3 at Warren High School in Downey.

The children who qualified for the Southern California track meet have been invited to attend the June 26 City Council meeting to be recognized for their achievements.

MINUTES

JOINT CITY COUNCIL/CITY COUNCIL AS SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT AGENCY/HOUSING AUTHORITY OF THE CITY OF DUARTE REGULAR MEETING – JUNE 12, 2012

CALL TO ORDER The City Council/City Council as Successor Agency to Dissolved Redevelopment Agency/Housing Authority of the City of Duarte met in a regular meeting in the Council Chambers, 1600 Huntington Drive, Duarte, California. Mayor Pro Tem Reilly called the meeting to order at 5:08 p.m.

RECORDATION OF ATTENDANCE The following were in attendance:
PRESENT: Finlay, Paras-Caracci, Reilly, Reyes (arrived at 6:16 p.m.), Fasana (arrived at 5:09 p.m.)
ABSENT: None
ADMINISTRATIVE STAFF PRESENT: City Manager George, City Attorney Slater

ADOPTION OF AGENDA Finlay moved, Paras-Caracci seconded to adopt the Agenda, and carried unanimously.

INTERVIEWS
Mayor's Youth Council City Council interviewed applicants for the Mayor's Youth Council. The interviews concluded at 6:32 p.m.

CLOSED SESSION
Existing Litigation George announced the Closed Session is pursuant to Government Code Section 54956.9(a); Conference with legal counsel; Existing litigation; *City of Duarte, California, v. City of Azusa, California, et al; Azusa Rock, Inc., et al, Real Parties in Interest*; California Court of Appeal, Second Appellate District, Division Four, Case No. B235097. The Closed Session concluded at 7:08 p.m. City Council reconvened at 7:15 p.m., with all members present.

PLEDGE TO THE FLAG Alan Heller led the Pledge of Allegiance to the Flag.

MOMENT OF REFLECTION Mayor Fasana stated the meeting will be adjourned in memory of Ray Bradbury. A moment of reflection was observed.

FITNESS/MENTAL WARM-UP Finlay provided the warm-up.

PUBLIC REPORT OF CLOSED SESSION Slater stated during the Closed Session, an update was provided on the status of the existing litigation, with no reportable action taken.

SPECIAL ITEMS
Recognition – Claudia Heller Cesar Monsalve introduced Claudia Heller and described her volunteer service to the City for the past several years. Mayor Fasana presented her with a Proclamation, and congratulations were extended.
Recognition – DHS Swim Team Cesar Monsalve described the Duarte High School Swim Team's successful 2012 season, and introduced Coach Dana Brewer and Recreation Supervisor Teesha Tarr. Mayor Fasana presented Cer-

tificates to the team members and coaches for taking first place in the Montview League Finals.

Recognition – Girl Scout Troop 4541 – Silver Award

Mayor Fasana introduced members of Girl Scout Troop 4541, and presented Certificates to them for receiving the Girl Scout Silver Award, the highest award Girl Scout Cadettes can earn.

Presentation – The Gas Company

Robert Cruz, The Gas Company, presented an overview of the Advanced Meter project to better control energy use and costs, including installation, benefits, transmittal of information, and timeline.

ANNOUNCEMENTS

Joanna Gee, Duarte Library, announced upcoming workshops and programs for the month of June.

Karen Herrera announced upcoming community events in the months of June, July, and August.

Robert Yoohanna announced food truck event on Saturday.

Agustin Caballero stated some Duarte High School students would like to start a water polo team.

Roy Torres thanked City Council for the swim team recognition.

Finlay asked that a discussion concerning a high school water polo team be placed on the Agenda of the next joint City Council/School Board meeting.

ORAL COMMUNICATIONS

The following spoke on items not on the Agenda.

Joe Wertheimer – 210 Freeway mural at Buena Vista.

Adriana Florio – Budget reduction for part-time employees.

Ron Avila – 400% parking permit increase.

Brian Villalobos – Fee resolution, parking enforcement effective July 30, introduction of Lt. Loy McBride.

Mayor Fasana asked that staff report back on the 210 Freeway mural at Buena Vista.

CONSENT CALENDAR
(City Council/Housing Authority)

Finlay moved, Reilly seconded to approve the Consent Calendar (City Council/Housing Authority), as follows, and carried unanimously.

Approve Items A, B, C, D, F, H.

Receive and File Item J, K.

Remove Items E, G, I, L.

RESOLUTION NO. 12-14
Route 66 Parade/Mt. Olive
Off-Ramp

Item F – 12-R-14 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, SUPPORTING THE DUARTE ROUTE 66 PARADE AND AGREEING TO ACCEPT LIABILITY AND MAINTENANCE FOR DETOUR-ED TRAFFIC FROM THE MOUNT OLIVE OFF-RAMP

ITEMS REMOVED
Item E – Council Bill 12-R-13
Temporary Signs

Council Bill 12-R-13 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE ADOPTING A POLICY OF THE CITY MANAGER TO SUSPEND ENFORCEMENT OF PROHIBITIONS ON CERTAIN TEMPORARY SIGNS FOR A PERIOD OF TWELVE MONTHS

6/12/12

Reyes thanked the Chamber and staff, and asked for clarification about signs that are allowed. Craig Hensley and Jim Kirchner responded.

Item E – Approved
RESOLUTION NO. 12-13

Reyes moved, Finlay seconded to approve Item E and adopt Resolution No. 12-13, and carried unanimously.

Item G – Council Bill 12-R-15
Unrepresented Employees

Council Bill 12-R-15 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, RESCINDING RESOLUTION NO. 11-29 AND ESTABLISHING A SALARY SCHEDULE AND COMPENSATION PLAN FOR UNREPRESENTED EMPLOYEES

Paras-Caracci discussed reduced programs/services, decrease in revenue, stated not only part-time employees are affected, and requested a brief summary of the item. George responded.

Steve Hernandez stated part-time employees cost the City less than regular employees, and should not be made to sacrifice.

Item G – Approved
RESOLUTION NO. 12-15

Paras-Caracci moved, Reilly seconded to approve Item G and adopt Resolution No. 12-15, and carried unanimously.

Item I – Letter to MTA

Mayor Fasana stated as the letter is addressed to the Metropolitan Transportation Authority, he would ask if Mayor Pro Tem Reilly could sign it, rather than himself. Reilly agreed.

Item I – Approved

Fasana moved, Finlay seconded to approve Item I, as amended to have Mayor Pro Tem Reilly sign the letter, and carried unanimously.

Item L – Conference Attendance

Finlay inquired about the costs involved for the NALEO conference and Harvard Kennedy School. Reilly stated the flight and hotel are covered by NALEO, and she would need transportation to and from the airport and incidental meals. Reyes stated he received a full scholarship for the three-week program at Harvard, it includes housing, which will be reimbursed, and he is asking the City to cover his flight.

Item L – Approved

Finlay moved, Reyes seconded to approve Item L, and carried unanimously.

CONSENT CALENDAR
(City Council as Successor
Agency)

Finlay moved, Paras-Caracci seconded to approve the Consent Calendar (City Council as Successor Agency), as follows, and carried unanimously.

Approve Item – Warrants for June 12, 2012.

RESOLUTION
Council Bill 12-R-16
Intent to levy assessments
2012-13 – Landscape/Lighting
Public Hearing – July 10, 2012

Slater read by title Council Bill 12-R-16:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2012-2013 WITHIN THE CITYWIDE LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT, PURSUANT

6/12/12

TO THE LANDSCAPE AND LIGHTING ACT OF 1972; AND
FIXING A TIME AND PLACE FOR THE PUBLIC HEARING
TO HEAR OBJECTIONS THERETO

Finlay moved, Reilly seconded to adopt Resolution No. 12-16,
and carried unanimously.

BUSINESS ITEMS

Nextdoor Social Network
Program

Karen Herrera introduced Justine Fenwick, Nextdoor, who presented an overview of the neighborhood online network program, stated it is geographically based, answered questions from Councilmembers regarding size of neighborhoods, and discussed urgent alerts.

Finlay moved, Reilly seconded to approve the Nextdoor Social Network Program for Duarte, and carried unanimously.

Emergency Action Plan Policy

Brian Villalobos introduced Code Enforcement Officer Larry Breceda, who presented an overview of the City of Duarte's Emergency Action Plan Policy pertaining to evacuation plans for City buildings, including its purpose, evacuation assembly areas/plans, elements, and training. Petersen provided additional information about the employee training program.

Paras-Caracci moved, Finlay seconded to approve the City of Duarte Emergency Action Plan Policy, and carried unanimously.

Fiscal Year 2012-13 Budget
City Council/Housing Authority

George provided brief introductory comments about the 2012-13 budget, including a number of cuts that have been made during the past four consecutive years, potential opportunities to enhance revenue sources, and survey/focus groups.

Petersen provided a detailed presentation about the 2012-13 City of Duarte operating budget with the theme "Committed To Serving This Community," including review of 2011-12 budget, past City budget cuts, City accomplishments, staff reductions, adjusting without redevelopment, 2012-13 projected general fund revenues and expenditures, program expenses, reductions, other City funds, Housing Authority funds, summary, and future.

There was discussion about the reduction in part-time staff.

Reyes moved, Paras-Caracci seconded to approve the budget, with the elimination of the \$41,000 cut to part-time maintenance staff. There was discussion about the increased permanent parking fee. After further discussion, Paras-Caracci withdrew her second. The motion died for lack for a second.

There was further discussion about deficit spending and part-time employees.

David Gallivan suggested giving part-time employees six months at the current rate, and looking at the situation after that.

Reyes moved, Reilly seconded to approve the budget, without cutting part-time employees.

Finlay stated the part-time situation could be reviewed in six months. Finlay added a friendly amendment to the main motion to phase in the increased permanent parking permit fee at \$100 for the first year, and \$200 thereafter. The amendment was accepted.

The motion for the City Council/Housing Authority to adopt the 2012-13 budget including the expense reductions to be implemented on January 1, 2013, in the event that a revenue measure is not attempted or not successful in November 2012, as amended to restore \$41,000 in funding for part-time maintenance positions, and to phase in the increased permanent parking permit fee at \$100 for the first year, and \$200 thereafter, carried by the following Roll Call vote:

AYES: Reyes, Paras-Caracci, Finlay, Reilly, Fasana

NOES: None

Appointments – Paid intergovernmental organizations

Slater stated Councilmembers may vote on their own appointments to paid seats on intergovernmental boards, and FPPC Form 806 reflecting the appointments will be posted on the City's website.

Foothill Transit – Reyes moved, Paras-Caracci seconded to appoint Tzeitel Paras-Caracci as Delegate, and Liz Reilly as Alternate, to Foothill Transit, and carried unanimously.

Gold Line Phase II JPA – Reyes moved, Reilly seconded to appoint Liz Reilly as Delegate, and Tzeitel Paras-Caracci as Alternate, to Gold Line Phase II JPA, and carried unanimously.

San Gabriel Valley Council of Governments – Reyes moved, Paras-Caracci seconded to appoint John Fasana as Governing Board Representative, and Margaret Finlay as Alternate Governing Board Representative, to San Gabriel Valley Council of Governments, and carried unanimously.

San Gabriel Valley Vector Control District – Reilly moved, Paras-Caracci seconded to appoint Phil Reyes as Representative to San Gabriel Valley Vector Control District, and carried unanimously.

Sanitation Districts #15 and #22 – Reyes moved, Reilly seconded to appoint John Fasana as Director, and Margaret Finlay as Alternate, to Sanitation Districts #15 and #22, and carried unanimously.

Economic Development Comm.
Business Representative vacancy

Paras-Caracci moved, Reilly seconded to advertise the Business Representative vacancy on the Economic Development Commission, and carried unanimously.

Appointment to Town Center Ad Hoc Advisory Committee

Reyes appointed Eric Greene to the Town Center Ad Hoc Advisory Committee.

ITEMS FROM CITY COUNCIL/
CITY MANAGER

GEORGE: Announced Cesar Monsalve has been selected as the Parks and Recreation Director, and an item requesting City Council concurrence of his appointment will be on the next meeting.

REYES: Stated Michael Harris signed with the San Diego Chargers and he would like to have him recognized at a Council meeting if possible, requested a copy of the report about the burglary that occurred near his house, inquired about the status of his request to name a street or park for Margaret Viramontes, stated he will not be in attendance at the July meetings, stated a church wanted to come into the community and could not because of the charge for a CUP, he would like to bring an item to the Agenda about fees for non-profits, stated the restrooms at Beardslee Park should be cleaned and painted, announced Food Court on Saturday, stated he would like to look at grant writing as another way to enhance revenue, and asked that an item about California Consulting be on the next meeting Agenda.

PARAS-CARACCI: Thanked staff for helping her with some residents' concerns.

FINLAY: Congratulated Mayor Fasana on receiving an award from Move LA, attended Relay for Life, inquired about deer hunting regulations, requested information, and suggested we coordinate with Bradbury, and asked if we can get phone numbers at Temple Station to receive information when helicopters are over the City.

REILLY: Participated in Relay for Life, and attended the senior breakfast at Duarte High School.

FASANA: Stated he would like a briefing about the golf course at the next meeting, congratulated the City of Hope on the opening of its new facility, attended Maxwell multi-cultural fair and Relay for Life, announced Gold Line Open House on June 28, congratulated Duarte High School on the stadium ground-breaking, asked that an updated water quality report be available on our website, he would like a Joint City Council/School Board meeting scheduled within the next month to include a discussion about joint-use facilities, asked for a report within the next nine months about unmanned aircraft to include whether other cities use it and privacy issues, and suggested the Public Safety Commission could possibly look into that, congratulated Cesar Monsalve on his appointment, and thanked all the youth who interviewed for the Mayor's Youth Council.

ADJOURNMENT

Finlay moved, Paras-Caracci seconded to adjourn the meeting at 11:20 p.m., in memory of Ray Bradbury and Timmy Borquez, and carried unanimously.

Mayor John Fasana

ATTEST:

City Clerk

6/12/12

0 7



MEMORANDUM

To: CITY COUNCIL

From: CESAR MONSALVE, DIRECTOR OF PARKS AND RECREATION

Subject: LOCAL INCENTIVE AWARD RESOLUTION

Date: JUNE 14, 2012

For the past 12 years, the City of Duarte Parks and Recreation Department has been the recipient of a Local Incentive Award through the California Department of Public Health to provide nutrition education to low income residents. Our current award will conclude on September 30, 2012. The City of Duarte Parks and Recreation Department has been offered a one-year extension that will conclude on September 30, 2013. In order to accept the extension, the City Council must approve the attached resolution.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE
DESIGNATING THE GRANTEE’S AGENT FOR ALL MATTERS RELATING
TO THE 2012/13 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH,
NETWORK FOR A HEALTHY CALIFORNIA LOCAL INCENTIVE AWARD**

BE IT RESOLVED by the City Council of the City of Duarte that the City Manager is authorized to execute for and in behalf of the City of Duarte, a public entity established under the laws of the State of California, all documents relating to the 2012/13 California Department of Public Health, Network for a Healthy California Local Incentive Award.

PASSED and ADOPTED this 26th day of June, 2012.

Mayor John Fasana

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 12-17 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 26th day of June 2012, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California

MEMORANDUM

TO: Darrell J. George, City Manager
FROM: Kristen Petersen, Assistant City Manager
DATE: June 26, 2012
SUBJECT: FUND BALANCE POLICY FOR GENERAL FUND

Background

In February of 2009 the Governmental Accounting Standards Board (GASB) issued its Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions. The requirements of this statement are intended to improve financial reporting by providing fund balance categories and classifications that will be, in GASB's estimation, more easily understood by readers of financial statements. While the GASB statement was issued in 2009, implementation for Duarte and similar sized cities is effective for FY 2011-12 financial statements, which staff will begin to prepare after the end of this month.

Discussion

The objective of GASB 54 is to improve the usefulness and understandability of governmental fund balance information. Prior to GASB 54, fund balance classifications were focused on the availability of monies for budgetary appropriation. In this manner, fund balances have historically been classified into three different components: Reserved, Designated and Undesignated. GASB 54 now requires a further level of distinction of unreserved fund balance from reserved fund balance.

Fund balance can be defined as the difference between the assets and liabilities reported in a governmental fund. It is apparently the opinion of GASB that current terminology (reserved, unreserved, designated) was not sufficiently self-explanatory for financial statement users; GASB believes its required changes in terminology will create more transparency.

There are five new components of fund balance created by Statement 54 that replaces the existing three components.

Nonspendable Fund Balance. Amounts that cannot be spent because they are either (1) not in a spendable form (land, prepaid items, loans receivable) or (2) legally or contractually required to be maintained intact (the principal portion of an endowment). This has been traditionally reported as "Reserved" fund balance.

Restricted Fund Balance. Reflects constraints placed on the use of resources, other than nonspendable items, that are (1) externally imposed by creditors (e.g., debt covenants), grantors,

Fund Balance Policy

June 26, 2012

Page 2

contributors, or laws and regulations of other governments, or (2) imposed by law. This category has been traditionally reported as "Reserved" fund balance.

Committed Fund Balance. Includes amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the City Council. Said amounts remain binding unless removed in the same manner. This category has been traditionally reported as "Designated" fund balance.

Assigned Fund Balance. Amounts that are constrained by the City's intention to be used for specific purposes, but that are not restricted or committed. The Administrative Policy as recommended designates the Finance Director to make these decisions.

Unassigned Fund Balance. Amounts that do not fall into one of the above four categories. The General Fund will be the only fund that will report this category of fund balance. This category has been traditionally reported as "Undesignated" fund balance.

A required element of the City's implementation of this statement is the formal adoption of the attached General Fund Balance Policy. The Policy describes the five components of fund balance and formally delegates to the Finance Director the assignment of fund balance for inclusion in the comprehensive annual financial report.

Recommendation

It is recommended that the City Council adopt Resolution No. 12-R-19 Approving a Fund Balance Policy for the General Fund.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE,
CALIFORNIA, ADOPTING A FUND BALANCE POLICY FOR
THE GENERAL FUND**

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued its Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions, with the intent of improving financial reporting by providing fund balance categories that will be more easily understood; and

WHEREAS, the City Council of the City of Duarte has considered the Fund Balance Policy which outlines the procedures to accurately categorize and report fund balance; and

WHEREAS, the City Council, as the City's highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution; and

WHEREAS, the City Council delegated the authority to assign fund balance to the Finance Director;

NOW THEREFORE, be it resolved by the City Council of the City of Duarte, California as follows:

Section 1. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. The City Council hereby approves the Fund Balance Policy for the General Fund attached as Exhibit A.

Section 3. This Resolution shall take effect immediately upon its adoption and that the City Clerk is hereby directed to forward a copy of this resolution to the Finance Director.

PASSED, APPROVED, AND ADOPTED this 26th day of June, 2012.

Mayor John Fasana

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 12-19 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 26th day of June, 2012, by the following vote:

- AYES: Councilmembers:
- NOES: Councilmembers:
- ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California

CITY OF DUARTE

Fund Balance Policy for General Fund

Policy Purpose:

To establish the procedures for reporting unrestricted fund balance in the General Fund financial statements.

I. PURPOSE

To establish the procedures for reporting unrestricted fund balance in the General Fund financial statements. Certain commitments and assignments of fund balance will help ensure that there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The policy also authorizes and directs the Finance Director to prepare financial reports, which accurately categorize fund balance as per Governmental Accounting Standards Board (GASB) Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions.

II. PROCEDURES

Fund Balance is essentially the difference between the assets and liabilities reported in a governmental fund. There are five separate components of fund balance, each of which identifies the extent to which the City is bound to honor constraints on the specific purposes for which amounts can be spent.

- Non-spendable fund balance (inherently non-spendable)
- Restricted fund balance (externally enforceable limitations on use)
- Committed fund balance (self-imposed limitations on use)
- Assigned fund balance (limitation resulting from intended use)
- Unassigned fund balance (residual net resources)

The first two components listed above are not addressed in this policy due to the nature of their restrictions. An example of non-spendable fund balance is inventory. Restricted fund balance is either imposed by law or constrained by grantors, contributors, or laws or regulation of other governments. This policy is focused on financial reporting of unrestricted fund balance, or the last three components listed above. These three components are further defined below.

Committed Fund Balance

The City Council, as the City's highest level of decision-making authority, may commit fund balance for specific purpose pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution. These committed amounts cannot be used for any other purpose unless the City Council removes or changes the specified use through the same type of formal action taken to establish the commitment. City Council action to commit fund balance needs to occur within the fiscal reporting period, however the amount can be determined subsequently. An example of committed fund balance is the vehicle replacement funds.

- Vehicle Replacement funds

Many years ago, the City Council took action to allocate funds for the creation of a reserve for the replacement of city vehicles and fleet equipment. These funds are included in the General Fund Balance, but are designated for this specific purpose. Over the years City Council made additional allocations towards the vehicles replacement fund and vehicles have been purchased. The net remaining balance is identified as committed to the replacement of vehicles.

Assigned Fund Balance

Amounts that are constrained by the City's intent to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. This policy hereby delegates the authority to assign amounts to be used for specific purposes to the Finance Director for the purposes of reporting these amounts in the annual financial statements. An example of assigned fund balance is continuing appropriations.

- Continuing Appropriations

Fund balance levels must be sufficient to meet funding requirements for projects approved in prior years and which must be carried forward into the new fiscal year.

Unassigned Fund Balance

These are residual positive net resources of the general fund in excess of what can properly be classified in one of the other four categories.

Fund Balance Classification

The accounting policies of the City consider restricted fund balance to have been spent first when the expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available. Similarly, when an expenditure is incurred for purposes for which amounts in any of the unrestricted classifications of fund balance could be used, the City considers committed amounts to be reduced first, followed by assigned amounts and then unassigned amounts.

This policy is in place to provide a measure of protection for the City against unforeseen circumstances and to comply with GASB Statement No. 54. No other policy or procedure supersedes the authority and provisions of this policy.

RE-ENTERED 1987 AMENDED DAVIS AGREEMENT/PROMISSORY NOTE

This RE-ENTERED 1987 AMENDED DAVIS AGREEMENT/PROMISSORY NOTE (“Re-Entered Agreement”), dated June 26, 2012 for reference purposes only (“Reference Date”), by and between the CITY OF DUARTE, a municipal corporation (“City”), and the CITY OF DUARTE IN ITS CAPACITY AS THE SUCCESSOR AGENCY (“Successor Agency”) to the dissolved Redevelopment Agency of the City of Duarte (“RDA”).

RECITALS

A. City is a municipal corporation existing and operating under the laws of the State of California.

B. RDA was a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (“CRL”).

C. RDA was established to exercise and undertake redevelopment activities for purposes of implementing the Merged Redevelopment Plan the Duarte Merged Redevelopment Project Area.

D. Under the CRL, the City had the express authority to provide the RDA with financial assistance for purposes of implementing redevelopment activities (see, e.g., Health and Safety Code Sections 33220, 33600, 33601, 33610, 33614; see also Government Code Section 53600 *et seq.*).

E. Pursuant to the authority granted under the CRL, the City and RDA entered into that certain Agreement, dated June 24, 1987, a copy of which is attached to this Re-Entered Agreement as Exhibit “A” and incorporated herein by this reference (the “1987 Amended Davis Agreement”).

F. On or about January 10, 2011, the Governor of California first proposed the dissolution of redevelopment agencies as part of his 2011-12 budget proposal.

G. Pursuant to Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature (“ABx1 26”), enacted as a bill related to the 2011-12 Budget Act in June 2011, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies in California were dissolved on February 1, 2012.

H. Pursuant to Health and Safety Code Section 34173(a) and (b), added by ABx1 26, the City, as the Successor Agency to the RDA, assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code.

I. Pursuant to Health and Safety Code Section 34179, added by ABx1 26, members of the Oversight Board of the Successor Agency to the former RDA have been duly appointed.

J. It has been asserted by the State of California Department of Finance (“DOF”) that under ABx1 26, as of February 1, 2012, all agreements between the city that formed the redevelopment agency and the former redevelopment agency are voided except such agreements entered into during the first two years after the formation of the redevelopment agency.

K. ABx1 26, however, provides that even if agreements between the city that created the redevelopment agency and the former redevelopment agency are voided (a position with which the City in its capacity as a municipal corporation, and the City in its capacity as Successor Agency, disagree and do not concede), under Health and Safety Code Sections 34178(a) and 34180(h), added to the CRL by ABx1 26, the Oversight Board has the authority to approve, at the request of the Successor Agency, the re-entering into any of those agreements.

L. Pursuant to Health and Safety Code Sections 34178(a) and 34180(h), the City, in its capacity as a municipal corporation, and in its capacity as the Successor Agency, re-enters into the 1987 Amended Davis Agreement as set forth in this Re-Entered Agreement.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the City As Successor Agency agree as follows:

1. Re-Entry Into 1987 Amended Davis Agreement. Subject to the terms and conditions in this Re-Entered Agreement, the City in its capacity as a municipal corporation, and the City in its capacity as the Successor Agency, re-enter into the 1987 Amended Davis Agreement pursuant to the authority set forth in Health and Safety Code Section 34178(a), subject to the provisions set forth in Paragraph 3 hereof. This Re-Entered Agreement does not supersede the existing 1987 Amended Davis Agreement but effects a re-entering of the 1987 Amended Davis Agreement pursuant to the terms of Health and Safety Code Section 34178(a) subject to the provisions set forth in Paragraph 3 hereof.

2. Reservation of Rights. The City, in its capacity as a municipal corporation, and the City As Successor Agency, hereby reserve any and all rights, and does not waive any rights which it may now or in the future have, for repayment under the existing 1987 Amended Davis Agreement, including but not limited to the right to receive repayment under the existing 1987 Amended Davis Agreement as may be authorized pursuant to any current or future law, amendment to ABx1 26, administrative or judicial decision, or otherwise.

3. Effective Date. This Re-Entered Agreement shall not be effective unless and until the Oversight Board has approved it pursuant to Health and Safety Code Sections 34178(a) and 34180(h) by adoption of a resolution. The date of adoption of a resolution by the Oversight Board approving this Re-Entered Agreement shall be the effective date of this Re-Entered Agreement. If the City in its capacity as a municipal corporation, and the City As Successor Agency, have not approved this Re-Entered Agreement prior to its approval by the Oversight Board, the City and the City As Successor Agency may approve this Re-Entered Agreement by ratification of the Oversight Board approval at a duly noticed public meeting of the City Council.

4. City Manager Authorization. The City Manager and authorized designees shall have the authority to execute such other and further agreements and documents, and take such

other and further actions, necessary to implement this Re-Entered Agreement on behalf of the City, in its capacity as a municipal corporation, and on behalf of the City As Successor Agency.

IN WITNESS WHEREOF, the City, in its capacity as a municipal corporation, and the City in its capacity as the Successor Agency, approves and enters into this Re-Entered Agreement as of the Reference Date and subject to the approval by the Oversight Board.

“City”

CITY OF DUARTE, a municipal corporation

By: _____
John Fasana, Mayor

ATTEST:

Marla Akana, City Clerk

APPROVED AS TO FORM:

Dan Slater, City Attorney

“Successor Agency”

CITY OF DUARTE As Successor Agency to the dissolved Redevelopment Agency of the City of Duarte

By: _____
John Fasana, Mayor

ATTEST:

Marla Akana, Secretary of the Successor Agency

APPROVED AS TO FORM:

Dan Slater, Successor Agency Counsel

EXHIBIT "A"

1987 Amended Davis Agreement

[SEE FOLLOWING PAGES]

AGREEMENT

This Agreement, by and between the City of Duarte (the "City") and the Redevelopment Agency of the City of Duarte (the "Agency").

WITNESSETH

WHEREAS, the Agency and the City have approved a redevelopment plan (the "Plan") for the Amended Davis Addition Redevelopment Project Area (the "Project Area") within the City;

WHEREAS, the Plan contemplates various public improvements of benefit to the Project Area, and authorizes the Agency to install and construct, or cause to be installed and constructed, such improvements;

WHEREAS, the Plan authorizes the Agency to cooperate with public bodies, including the City, in carrying out the Plan, and the Plan specifies that the City shall aid and cooperate with the Agency in undertaking the Plan by expending such funds and taking such actions as are necessary to ensure the fulfillment of the Plan;

WHEREAS, the Plan authorizes the Agency to finance the improvements contemplated by the Plan with, among other things, financial assistance from the City, including loans for public facilities, and authorizes the Agency to obtain advances, borrow funds and create indebtedness and other obligations in carrying out the Plan;

WHEREAS, the Agency and the City agree that the improvements listed in Exhibit A hereto (the "Improvements") were contemplated by the Plan, are of substantial benefit to the Project Area and are necessary for the fulfillment of the Plan;

WHEREAS, the Agency and the City agree that the City was best able to carry out the acquisition and construction of the Improvements;

WHEREAS, the Agency and the City intended that the City undertake the Improvements on behalf of the Agency, but only on the condition that the Agency reimburse the City for funds advanced by the City for the acquisition and construction of Improvements at such time as the Agency had sufficient funds therefor; and

WHEREAS, the Agency and the City now desire to memorialize their agreements as set forth above;

NOW, THEREFORE, for and in consideration of the premises and for their mutual advantage and concern, the parties hereto do hereby agree as follows:

1. It is hereby specifically found and declared that the Improvements are of substantial benefit to the Project Area and essential to the development of the full potential

of the Project Area, and that no other reasonable means of financing the Improvements are available to the City and the Agency except as contemplated hereby.

2. The City and the Agency agree that the Improvements were acquired and constructed for and on behalf of the Agency and that all costs of the City in connection therewith were advancements to and on behalf of the Agency. Accordingly, the Agency agrees to reimburse the City for its expenditures in connection with the Improvements in the total principal sum of \$4,510,400 plus interest from the time of expenditure by the City payable at a rate from year to year equal to the approximate average rate of return on investments of City funds generally, as such rate is determined by the City Treasurer or his designee. It is intended by the Agency that this Agreement and such reimbursement obligation constitute an indebtedness of the Agency.

3. The Agency agrees to make the reimbursement to the City of the amount listed in paragraph 2 above, with interest thereon as specified above, at such times and in such amounts as the Agency has available funds therefore. The Agency shall determine, from time to time, but no later than November 1 of each year, the extent to which funds are available to make such reimbursement in whole or in part, based upon the existing contractual obligations of the Agency.

4. The Agency and the City agree that the reimbursement obligations of the Agency are subordinate to any Agency bonds, notes or obligations under any indenture, or lease agreement, installment sale agreement, reimbursement agreement or other obligation to which the Agency is a party. Reimbursement to the City shall be made according to the extent of funds available to the Agency in excess of amounts needed to pay any other current obligations of the Agency.

5. This Agreement constitutes a binding agreement of the parties hereto and may not be rescinded or amended by either party without the written consent of the other.

6. The Agency and the City have entered into and may enter into other agreements with respect to improvements of benefit to the Project Area, other than the Improvements, and such other agreements shall in no way effect or be governed by the terms of this Agreement except to the extent explicitly set forth in such agreements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of June 24, 1987 memorializing the prior agreements between the Agency and the City with respect to the Improvements.

CITY OF DUARTE

By: Juan H. Duff
City Manager

REDEVELOPMENT AGENCY OF
THE CITY OF DUARTE

By: Maria A. Mancy
Chairman

EXHIBIT A

Schedules of Improvements

<u>Description of Improvement</u>	<u>Year of Completion</u>	<u>Reimbursable Cost</u>
1. Town Center Construction	1980-87	\$1,968,737
2. Huntington Drive Median Construction	1977	255,000
3. Royal Oaks Park Extension, Land and Construction	1980	660,000
4. Bike & Equestrian Trail Construction	1982	61,250
5. Duarte Sports Park Construction	1981	550,000
6. Railroad Crossing Improvements (Highland)	1986	35,000
7. Utility Undergrounding, Mt. Olive Drive	1980	50,000
8. Amended Davis Addition Storm Drain, Industrial Park	1982	350,000
9. Amended Davis Addition Storm Drain, Las Lomas to Mt. Olive Drive	1982	279,210
10. Utility Undergrounding Las Lomas & Huntington Drive	1980	200,000
11. Slurry Seal Program, Hearthstone Las Lomas Villas Industrial Park	1985	30,000
12. Street Paving, Industrial Park & Las Lomas Road	1981	<u>71,202</u>
	Total Principal	<u>\$4,510,400</u>
13. Interest on Items 1-12.	1977 (7%)	17,850
	1978 (7%)	19,099
	1979 (9%)	26,275
	1980 (12%)	322,661
	1981 (12%)	522,273
	1982 (11%)	806,084
	1983 (10%)	865,963
	1984 (10%)	702,559
	1985 (9%)	698,234
	1986 (8%)	679,311
	1987 (8%)(thru 6/20/87)	351,753
	Total Interest (thru June 24, 1987)	<u>\$5,012,062</u>
	Total Due to City (as of June 24, 1987)	<u>\$9,522,462</u>

CITY OF DUARTE

Index J.6

Prep By	Checked By	Mgr Rev	Ptrr Rev
#NAME?	#NAME?	#NAME?	#NAME?
#NAME?	#NAME?	#NAME?	#NAME?

Amended Davis Addition Promssory Note
AS OF JUNE 30, 2011

From last known audited F/S which added unpaid interest:

FYE	Principal Carried Forward	Principal Addition	Principal	Compounded Interest Accrued Variable, See J. 6. A	Cummulative Interest	Repayment	Total
6/30/90	3,075,091		3,075,091	-	-		3,075,091
		(973,826)				(246,407)	
6/30/91	3,075,091		2,101,265	246,407	-		2,101,265
6/30/92	2,101,265		2,101,265	130,194	130,194		2,231,459
6/30/93	2,101,265		2,101,265	105,035	235,229		2,336,494
6/30/94	2,101,265		2,101,265	102,502	337,731		2,438,996
6/30/95	2,101,265		2,101,265	134,925	472,656		2,573,921
6/30/96	2,101,265		2,101,265	146,868	619,524		2,720,789
6/30/97	2,101,265		2,101,265	152,337	771,861		2,873,126
6/30/98	2,101,265		2,101,265	163,739	935,600		3,036,865
6/30/99	2,101,265		2,101,265	162,290	1,097,890		3,199,155
6/30/00	2,101,265		2,101,265	182,608	1,280,498		3,381,763
6/30/01	2,101,265		2,101,265	206,423	1,486,921		3,588,186
6/30/02	2,101,265		2,101,265	123,613	1,610,534		3,711,799
6/30/03	2,101,265		2,101,265	79,878	1,690,412		3,791,677
6/30/04	2,101,265		2,101,265	58,088	1,748,500		3,849,765
6/30/05	2,101,265		2,101,265	86,851	1,835,351		3,936,616
6/30/06	2,101,265		2,101,265	152,465	1,987,816		4,089,081
						(1,000,000)	
6/30/07	2,101,265		2,101,265	209,402	1,197,218		3,298,483
6/30/08	2,101,265		2,101,265	142,659	1,339,877		3,441,142
6/30/09	2,101,265		2,101,265	76,531	1,416,408		3,517,673
6/30/10	2,101,265		2,101,265	229,001	1,645,409		3,746,674
						(1,195,522)	
6/30/11	2,101,265		2,101,265	185,460	635,347		2,736,612
TOTALS							
Ending Principal		2,101,265					
Ending Cumulative Unpaid Interest							635,347
							<u>2,736,612</u>

RE-ENTERED 1991 HAMILTON PROMISSORY NOTE

This RE-ENTERED 1991 HAMILTON PROMISSORY NOTE (“Re-Entered Agreement”), dated June 26, 2012 for reference purposes only (“Reference Date”), by and between the CITY OF DUARTE, a municipal corporation (“City”), and the CITY OF DUARTE IN ITS CAPACITY AS THE SUCCESSOR AGENCY (“Successor Agency”) to the dissolved Redevelopment Agency of the City of Duarte (“RDA”).

R E C I T A L S

A. City is a municipal corporation existing and operating under the laws of the State of California.

B. RDA was a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (“CRL”).

C. RDA was established to exercise and undertake redevelopment activities for purposes of implementing the Merged Redevelopment Plan the Duarte Merged Redevelopment Project Area.

D. Under the CRL, the City had the express authority to provide the RDA with financial assistance for purposes of implementing redevelopment activities (see, e.g., Health and Safety Code Sections 33220, 33600, 33601, 33610, 33614; see also Government Code Section 53600 *et seq.*).

E. Pursuant to the authority granted under the CRL, the City and RDA entered into that certain Promissory Note, dated February 26, 1991, a copy of which is attached to this Re-Entered Agreement as Exhibit “A” and incorporated herein by this reference (the “1991 Hamilton Note”).

F. On or about January 10, 2011, the Governor of California first proposed the dissolution of redevelopment agencies as part of his 2011-12 budget proposal.

G. Pursuant to Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature (“ABx1 26”), enacted as a bill related to the 2011-12 Budget Act in June 2011, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies in California were dissolved on February 1, 2012.

H. Pursuant to Health and Safety Code Section 34173(a) and (b), added by ABx1 26, the City, as the Successor Agency to the RDA, assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code.

I. Pursuant to Health and Safety Code Section 34179, added by ABx1 26, members of the Oversight Board of the Successor Agency to the former RDA have been duly appointed.

J. It has been asserted by the State of California Department of Finance (“DOF”) that under ABx1 26, as of February 1, 2012, all agreements between the city that formed the redevelopment agency and the former redevelopment agency are voided except such agreements entered into during the first two years after the formation of the redevelopment agency.

K. ABx1 26, however, provides that even if agreements between the city that created the redevelopment agency and the former redevelopment agency are voided (a position with which the City in its capacity as a municipal corporation, and the City in its capacity as Successor Agency, disagree and do not concede), under Health and Safety Code Sections 34178(a) and 34180(h), added to the CRL by ABx1 26, the Oversight Board has the authority to approve, at the request of the Successor Agency, the re-entering into any of those agreements.

L. Pursuant to Health and Safety Code Sections 34178(a) and 34180(h), the City, in its capacity as a municipal corporation, and in its capacity as the Successor Agency, re-enters into the 1991 Hamilton Note as set forth in this Re-Entered Agreement.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the City As Successor Agency agree as follows:

1. Re-Entry Into 1991 Hamilton Note. Subject to the terms and conditions in this Re-Entered Agreement, the City in its capacity as a municipal corporation, and the City in its capacity as the Successor Agency, re-enter into the 1991 Hamilton Note pursuant to the authority set forth in Health and Safety Code Section 34178(a), subject to the provisions set forth in Paragraph 3 hereof. This Re-Entered Agreement does not supersede the existing 1991 Hamilton Note but effects a re-entering of the 1991 Hamilton Note pursuant to the terms of Health and Safety Code Section 34178(a) subject to the provisions set forth in Paragraph 3 hereof.

2. Reservation of Rights. The City, in its capacity as a municipal corporation, and the City As Successor Agency, hereby reserve any and all rights, and does not waive any rights which it may now or in the future have, for repayment under the existing 1991 Hamilton Note, including but not limited to the right to receive repayment under the existing 1991 Hamilton Note as may be authorized pursuant to any current or future law, amendment to ABx1 26, administrative or judicial decision, or otherwise.

3. Effective Date. This Re-Entered Agreement shall not be effective unless and until the Oversight Board has approved it pursuant to Health and Safety Code Sections 34178(a) and 34180(h) by adoption of a resolution. The date of adoption of a resolution by the Oversight Board approving this Re-Entered Agreement shall be the effective date of this Re-Entered Agreement. If the City in its capacity as a municipal corporation, and the City As Successor Agency, have not approved this Re-Entered Agreement prior to its approval by the Oversight Board, the City and the City As Successor Agency may approve this Re-Entered Agreement by ratification of the Oversight Board approval at a duly noticed public meeting of the City Council.

4. City Manager Authorization. The City Manager and authorized designees shall have the authority to execute such other and further agreements and documents, and take such

other and further actions, necessary to implement this Re-Entered Agreement on behalf of the City, in its capacity as a municipal corporation, and on behalf of the City As Successor Agency.

IN WITNESS WHEREOF, the City, in its capacity as a municipal corporation, and the City in its capacity as the Successor Agency, approves and enters into this Re-Entered Agreement as of the Reference Date and subject to the approval by the Oversight Board.

“City”

CITY OF DUARTE, a municipal corporation

By: _____
John Fasana, Mayor

ATTEST:

Marla Akana, City Clerk

APPROVED AS TO FORM:

Dan Slater, City Attorney

“Successor Agency”

CITY OF DUARTE As Successor Agency to the dissolved Redevelopment Agency of the City of Duarte

By: _____
John Fasana, Mayor

ATTEST:

Marla Akana, Secretary of the Successor Agency

APPROVED AS TO FORM:

Dan Slater, Successor Agency Counsel

EXHIBIT "A"

1991 Hamilton Note

[SEE FOLLOWING PAGES]

Executive Director

Conrac

MEMORANDUM

TO: Executive Director
FROM: Assistant Executive Director
SUBJECT: AUTHORIZATION TO ISSUE PROMISSORY NOTE
DATE: February 21, 1991

The Redevelopment Agency has requested a loan of \$3,000,000 from the City of Duarte's Cable Television Fund.

As a means of memorializing this loan and the terms of its repayment, the issuance of a Promissory Note in favor of the City of Duarte is required.

The loan terms set out in the Note are as follows:

1. **TERM:** Five (5) years commencing 3/1/91 ending 2/28/96.
2. **INTEREST RATE:** 8.5% Simple Interest payable semi-annually.

The purpose of the loan is to enable the Agency to acquire approximately 7 acres of property currently owned by the Mark IV Corporation in the area of Hamilton Road and Mountain Avenue. This acquisition is necessary to implement provisions of the Agency's Disposition and Development Agreement with La Mesa R.V. Sales.

Recommendation

That the Redevelopment Agency authorize the issuance of the attached Promissory Note and direct its Chairman to execute said Note on behalf of the Agency.

PROMISSORY NOTE

\$3,000,000

On or before February 28, 1996, the Redevelopment Agency of the City of Duarte promises to pay in lawful money of the United States, to the order of the City of Duarte, the principal sum of \$3,000,000, plus interest accruing at the rate of 8.5% per annum, Simple Interest payable semi-annually on September 1 and March 1, following the issuance of this Note.

In the event of commencement of suit to enforce payment of this Note, Agency agrees to pay to City each additional sum such as attorney fees as the court may judge reasonable.

Redevelopment Agency of the
City of Duarte

By: James D. Kirchner
Chairman, James D. Kirchner

Date: February 26, 1991

By: Jesse H. Duff
Secretary, Jesse Duff

Date: 2-26-91

Index 1.6

Prep By	Checked By	Mgr Rev	Ptnr Rev
#NAME?	#NAME?	#NAME?	#NAME?
#NAME?	#NAME?	#NAME?	#NAME?

CITY OF DUARTE
Hamilton Promissory Note (RD2)
AS OF JUNE 30, 2011

From last known audited F/S which added unpaid interest:

FYE	Principal Carried Forward	Principal Addition	Principal	Simple Interest Accrued 8.5%	Cummulative Interest	Repayment	Total
6/30/90	110,939	-	110,939	-	-	-	110,939
6/30/91	110,939	791,267	902,206	9,430	9,430	-	911,636
6/30/92	902,206	33,682	935,888	76,688	86,117	-	1,022,005
6/30/93	935,888	194,485	1,130,373	79,550	165,668	-	1,296,041
6/30/94	1,130,373	(54,380)	1,075,993	96,082	(0)	(316,130)	1,075,993
6/30/95	1,075,993	(2,795)	1,073,198	91,459	(0)	(94,254)	1,073,198
6/30/96	1,073,198		1,073,198	91,222	91,222		1,164,420
6/30/97	1,073,198		1,073,198	91,222	182,444		1,255,642
6/30/98	1,073,198		1,073,198	91,222	273,665		1,346,863
6/30/99	1,073,198		1,073,198	91,222	364,887		1,438,085
6/30/00	1,073,198		1,073,198	91,222	456,109		1,529,307
6/30/01	1,073,198		1,073,198	91,222	547,331		1,620,529
6/30/02	1,073,198		1,073,198	91,222	638,553		1,711,751
6/30/03	1,073,198		1,073,198	91,222	729,775		1,802,973
6/30/04	1,073,198		1,073,198	91,222	820,996		1,894,194
6/30/05	1,073,198		1,073,198	91,222	912,218		1,985,416
6/30/06	1,073,198		1,073,198	91,222	1,003,440		2,076,638
6/30/07	1,073,198		1,073,198	91,222	729,746	(364,916)	1,802,944
6/30/08	1,073,198		1,073,198	91,222	820,968		1,894,166
6/30/09	1,073,198		1,073,198	91,222	912,190		1,985,388
6/30/10	1,073,198		1,073,198	91,222	1,003,411		2,076,609
6/30/11	1,073,198		1,073,198	91,222	644,633	(450,000)	1,717,831
TOTALS							
Ending Principal		1,073,198					
Ending Cumulative Unpaid Interest		<u>644,633</u>					
		1,717,831					

RE-ENTERED 1991 RANCHO DUARTE PHASE III PROMISSORY NOTE

This RE-ENTERED 1991 RANCHO DUARTE PHASE III PROMISSORY NOTE (“Re-Entered Agreement”), dated June 26, 2012 for reference purposes only (“Reference Date”), by and between the CITY OF DUARTE, a municipal corporation (“City”), and the CITY OF DUARTE IN ITS CAPACITY AS THE SUCCESSOR AGENCY (“Successor Agency”) to the dissolved Redevelopment Agency of the City of Duarte (“RDA”).

RECITALS

A. City is a municipal corporation existing and operating under the laws of the State of California.

B. RDA was a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (“CRL”).

C. RDA was established to exercise and undertake redevelopment activities for purposes of implementing the Merged Redevelopment Plan the Duarte Merged Redevelopment Project Area.

D. Under the CRL, the City had the express authority to provide the RDA with financial assistance for purposes of implementing redevelopment activities (see, e.g., Health and Safety Code Sections 33220, 33600, 33601, 33610, 33614; see also Government Code Section 53600 *et seq.*).

E. Pursuant to the authority granted under the CRL, the City and RDA entered into that certain Promissory Note, dated February 12, 1991, a copy of which is attached to this Re-Entered Agreement as Exhibit “A” and incorporated herein by this reference (the “1991 RD-III Note”).

F. On or about January 10, 2011, the Governor of California first proposed the dissolution of redevelopment agencies as part of his 2011-12 budget proposal.

G. Pursuant to Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature (“ABx1 26”), enacted as a bill related to the 2011-12 Budget Act in June 2011, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies in California were dissolved on February 1, 2012.

H. Pursuant to Health and Safety Code Section 34173(a) and (b), added by ABx1 26, the City, as the Successor Agency to the RDA, assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code.

I. Pursuant to Health and Safety Code Section 34179, added by ABx1 26, members of the Oversight Board of the Successor Agency to the former RDA have been duly appointed.

J. It has been asserted by the State of California Department of Finance (“DOF”) that under ABx1 26, as of February 1, 2012, all agreements between the city that formed the redevelopment agency and the former redevelopment agency are voided except such agreements entered into during the first two years after the formation of the redevelopment agency.

K. ABx1 26, however, provides that even if agreements between the city that created the redevelopment agency and the former redevelopment agency are voided (a position with which the City in its capacity as a municipal corporation, and the City in its capacity as Successor Agency, disagree and do not concede), under Health and Safety Code Sections 34178(a) and 34180(h), added to the CRL by ABx1 26, the Oversight Board has the authority to approve, at the request of the Successor Agency, the re-entering into any of those agreements.

L. Pursuant to Health and Safety Code Sections 34178(a) and 34180(h), the City, in its capacity as a municipal corporation, and in its capacity as the Successor Agency, re-enters into the 1991 RD-III Note as set forth in this Re-Entered Agreement.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the City As Successor Agency agree as follows:

1. Re-Entry Into 1991 RD-III Note. Subject to the terms and conditions in this Re-Entered Agreement, the City in its capacity as a municipal corporation, and the City in its capacity as the Successor Agency, re-enter into the 1991 RD-III Note pursuant to the authority set forth in Health and Safety Code Section 34178(a), subject to the provisions set forth in Paragraph 3 hereof. This Re-Entered Agreement does not supersede the existing 1991 RD-III Note but effects a re-entering of the 1991 RD-III Note pursuant to the terms of Health and Safety Code Section 34178(a) subject to the provisions set forth in Paragraph 3 hereof.

2. Reservation of Rights. The City, in its capacity as a municipal corporation, and the City As Successor Agency, hereby reserve any and all rights, and does not waive any rights which it may now or in the future have, for repayment under the existing 1991 RD-III Note, including but not limited to the right to receive repayment under the existing 1991 RD-III Note as may be authorized pursuant to any current or future law, amendment to ABx1 26, administrative or judicial decision, or otherwise.

3. Effective Date. This Re-Entered Agreement shall not be effective unless and until the Oversight Board has approved it pursuant to Health and Safety Code Sections 34178(a) and 34180(h) by adoption of a resolution. The date of adoption of a resolution by the Oversight Board approving this Re-Entered Agreement shall be the effective date of this Re-Entered Agreement. If the City in its capacity as a municipal corporation, and the City As Successor Agency, have not approved this Re-Entered Agreement prior to its approval by the Oversight Board, the City and the City As Successor Agency may approve this Re-Entered Agreement by ratification of the Oversight Board approval at a duly noticed public meeting of the City Council.

4. City Manager Authorization. The City Manager and authorized designees shall have the authority to execute such other and further agreements and documents, and take such

other and further actions, necessary to implement this Re-Entered Agreement on behalf of the City, in its capacity as a municipal corporation, and on behalf of the City As Successor Agency.

IN WITNESS WHEREOF, the City, in its capacity as a municipal corporation, and the City in its capacity as the Successor Agency, approves and enters into this Re-Entered Agreement as of the Reference Date and subject to the approval by the Oversight Board.

“City”

CITY OF DUARTE, a municipal corporation

By: _____
John Fasana, Mayor

ATTEST:

Marla Akana, City Clerk

APPROVED AS TO FORM:

Dan Slater, City Attorney

“Successor Agency”

CITY OF DUARTE As Successor Agency to the dissolved Redevelopment Agency of the City of Duarte

By: _____
John Fasana, Mayor

ATTEST:

Marla Akana, Secretary of the Successor Agency

APPROVED AS TO FORM:

Dan Slater, Successor Agency Counsel

EXHIBIT "A"

1991 RD-III Note

[SEE FOLLOWING PAGES]

*City Ag. -
Edu. Div.*

*R. D. III
Ed. Park*

MEMORANDUM

TO: Executive Director
FROM: Assistant Executive Director
SUBJECT: RANCHO DUARTE PHASE III PROMISSORY NOTE
DATE: February 7, 1991

Between October 1988 and October 1989, the City's Economic Development Fund advanced the Duarte Redevelopment Agency's Rancho Duarte Phase III Project Area \$6,128,857. This was for the purpose of undertaking the Educational Park and Trammel Crow/Ralphs Projects. Accrued interest figured at the rate of 10% per annum has added an additional \$1,261,807, bringing the Agency's repayment obligation to a total of \$7,390,664.

Now that the Ralphs Project is complete and the Educational Park is 99.9% complete, it would seem appropriate to memorialize this repayment obligation in the form of a Promissory Note. The Promissory Note makes repayment an obligation of the Rancho Duarte III Project Area only and is to be repaid from tax increment revenues which will become available once the Project Area Amendment is complete.

RECOMMENDATION

That the City Council approve by minute motion the terms of the Promissory Note.

That the Redevelopment Agency Board approve the terms of the Note and direct its Chairman to execute the same.

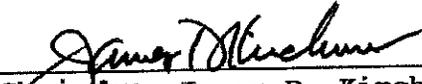
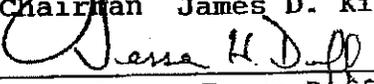
PROMISSORY NOTE

\$7,390,664.00 Duarte, California February 12, 1991

On or before July 1, 2021, the Redevelopment Agency of the City of Duarte promises to pay in lawful money of the United States of America, to the order of the City of Duarte, the principal sum of \$7,390,664.00, plus interest accruing on the unpaid balance at the rate of 10% per annum. Interest and principal shall be payable from available Property Tax Increments generated from the Rancho Duarte Phase III Redevelopment project area.

In the event of Commencement of Suit to enforce payment of this Note, Agency agrees to pay to City such additional sum as attorney fees as the court may judge reasonable.

Redevelopment Agency of the
City of Duarte

By: 
Chairman James D. Kirchner
By: 
Secretary Jesse Duff

Index 1.6

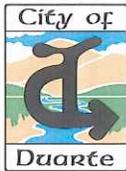
Prep By	Checked By	Mgr Rev	Ptnr Rev
#NAME?	#NAME?	#NAME?	#NAME?
#NAME?	#NAME?	#NAME?	#NAME?

CITY OF DUARTE
 Rancho Duarte (RD3)
 AS OF JUNE 30, 2011

From last known audited F/S which added unpaid interest:

FYE	Principal Carried Forward	Principal Addition	Principal	Compunded Interest Accrued 10.0%	Cummulative Interest	Repayment	Total
6/30/90	6,128,856		6,128,856	-	-		6,128,856
6/30/91	6,128,856	32,884	6,128,856	612,886	542,539	(70,347)	6,671,395
6/30/92	6,128,856	167,500	6,161,740	667,140	1,209,679		7,371,419
6/30/93	6,161,740		6,329,240	737,142	1,946,821	(1,027,988)	8,276,061
6/30/94	6,329,240		6,329,240	827,606	1,746,439	(810,856)	8,075,679
6/30/95	6,329,240		6,329,240	807,568	1,743,151		8,072,391
6/30/96	6,329,240		6,329,240	807,239	2,550,390		8,879,630
6/30/97	6,329,240		6,329,240	887,963	3,438,353		9,767,593
6/30/98	6,329,240		6,329,240	976,759	4,415,112		10,744,352
6/30/99	6,329,240		6,329,240	1,074,435	5,489,547		11,818,787
6/30/00	6,329,240		6,329,240	1,181,879	6,671,426		13,000,666
6/30/01	6,329,240		6,329,240	1,300,067	7,971,493		14,300,733
6/30/02	6,329,240		6,329,240	1,430,073	9,401,566		15,730,806
6/30/03	6,329,240		6,329,240	1,573,081	10,974,647		17,303,887
6/30/04	6,329,240		6,329,240	1,730,389	12,705,036		19,034,276
6/30/05	6,329,240		6,329,240	1,903,428	14,608,464		20,937,704
6/30/06	6,329,240		6,329,240	2,093,770	16,702,234		23,031,474
6/30/07	6,329,240		6,329,240	2,303,147	19,005,381	(1,000,000)	25,334,621
6/30/08	6,329,240		6,329,240	2,533,462	20,538,843		26,868,083
6/30/09	6,329,240		6,329,240	2,686,808	23,225,651		29,554,891
6/30/10	6,329,240		6,329,240	2,955,489	26,181,140	(7,500,000)	32,510,380
6/30/11	6,329,240		6,329,240	3,251,038	21,932,178		28,261,418

TOTALS	
Ending Principal	6,329,240
Ending Cumulative Unpaid Interest	21,932,178
	<u>28,261,418</u>



CITY COUNCIL STAFF REPORT

Date: June 26, 2012

To: Mayor and City Council/Redevelopment Agency 

From: Craig Hensley, AICP, Community Development Director

Subject: Disposition and Development Agreement (DDA) between Duarte Housing Authority and Southern California Presbyterian Homes

Location: 1700 East Huntington Drive

SUMMARY

On July 27, 2010, the Agency approved an Option Agreement with Southern California Presbyterian Homes (SCPH) for financial assistance and the sale of the property at 1700 Huntington Drive. The 24,425 square foot property is adjacent to Andres Duarte Terrace, an affordable, senior housing project that is owned and operated by SCPH.

Since the time of that Option agreement, SCPH has received Federal funding for the project from HUD. The \$7,013,000 of HUD Section 202 funds and the major funding source for the project. SCPH is also seeking State 4% tax credit funding and plans to begin project construction in Fall 2013.

The Option Agreement called for the approval of the project DDA prior to July 27, 2012 and the financial aspects of the deal are the same as in the Option Agreement. The 24,425 square foot property will be sold to SCPH for \$870,000. This is the fair market value determined by a recent appraisal conducted by The Renken Company in May 2010. The Housing Authority (Formerly Agency) will provide 1.2 million dollars of financial assistance to SCPH to assist in the development of the property

SCPH has completed its entitlement work on the project with the approval of a revision to the Andres Duarte Specific Plan. Final plans have been submitted for Architectural Review Board approval and action is anticipated in the next 45 days.

The City's Oversight Board approved the Option Agreement and this action is consistent with that approval. Staff recommends approval of attached Resolution 12-H-01.

Attachments: Resolution 12-H-01
Draft Disposition and Development Agreement

RESOLUTION NO.**A RESOLUTION OF DUARTE HOUSING AUTHORITY
APPROVING A DISPOSITION AND DEVELOPMENT
AGREEMENT BETWEEN THE DUARTE HOUSING
AUTHORITY AND SOUTHERN CALIFORNIA
PRESBYTERIAN HOMES (SCPH)**

WHEREAS, the Redevelopment Agency of the City of Duarte (“RDA”) and Southern California Presbyterian Homes (“SCPH”), on or about August 9, 2010, entered into an Option Agreement that set forth the details for financial assistance and property sale leading to the development of a 43 unit senior affordable housing project by SCPH on the property located at 1700 Huntington Drive (the “Property”); and

WHEREAS, the RDA was dissolved as of February 1, 2012, pursuant to the terms of Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature as modified by the California Supreme Court decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231 (“ABx1 26”); and

WHEREAS, pursuant to a provision of ABx1 26, at subdivision (b) of Health and Safety Code Section 34176, the City Council elected not to retain the housing assets and functions of the dissolved RDA but instead to transfer those housing assets and functions to the Duarte Housing Authority (“Authority”) as the local housing authority, pursuant to paragraph (2) of subdivision (b) of Health and Safety Code Section 34176; and

WHEREAS, the Option Agreement and the Property are housing assets transferred to the Authority pursuant to subdivision (b) of Health and Safety Code Section 34176; and

WHEREAS, pursuant to the aforescribed action taken by the City Council and the transfer of the housing assets and functions of the dissolved RDA to the Authority, the Authority is vested with the rights and powers of the former RDA with respect to the transferred housing assets and functions, including the Option Agreement and the Property, and the Authority has the rights, powers, obligations, and duties of the former RDA as set forth in the Option Agreement; and

WHEREAS, the Option Agreement requires SCPH and the Authority (as the housing successor to the dissolved RDA) to negotiate and enter into a disposition and development agreement to implement the terms of the Option Agreement; and

WHEREAS, the Authority and SCPH have negotiated a disposition and development agreement; and

WHEREAS, at its meeting of June 26, 2012, the Authority considered the disposition and development agreement and the information, evidence, and testimony provided in connection therewith, including the staff report submitted by the Community Development Department of the City of Duarte;

NOW, THEREFORE, the Duarte Housing Authority resolves as follows:

Section 1. The Authority finds and determines that the consideration to be paid for the Property is not less than fair market value, and that all of the terms of the Disposition and Development Agreement are consistent with applicable law.

Section 2. The Authority hereby approves the Disposition and Development Agreement between the Authority and SCPH in the form presented concurrently with the Resolution and on file with the Secretary of the Authority.

Section 3. The Executive Director of the Authority is authorized and directed to make any final technical modifications to the Agreement consistent with the business terms presented in the form of Agreement considered by the Authority concurrently with this Resolution, and the Chair is thereafter authorized and directed to sign the Agreement on behalf of the Authority.

Section 4. The Executive Director of the Authority and his authorized designees are authorized and directed to take such other and further actions, and to sign such other and further documents, including but not limited to escrow instructions and grant deed, to effectuate the purposes of this Resolution and the Agreement on behalf of the Authority.

PASSED, APPROVED, AND ADOPTED this 26th day of June, 2012.

John Fasana, Chair

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, Secretary of the Duarte Housing Authority, hereby attest to the above signature and certify that Resolution No. 12-H-01 was adopted by the Duarte Housing Authority at a regular meeting of said Authority held on the 26th day of June, 2012, by the following vote:

AYES: Authority members:

NOES: Authority members:

ABSENT: Authority members:

Authority Secretary Marla Akana
City of Duarte, California

City Council Meeting – June 26, 2012

Agenda Item 12.H. (Consent Calendar)

Please note:

The Disposition and Development Agreement Between the Duarte Housing Authority and Southern California Presbyterian Homes is available on the City of Duarte website, at Duarte City Hall during regular business hours, and on the back table of the City Council Chambers at the June 26, 2012, City Council Meeting.

Agenda Memo City Manager's Office

To: Mayor and Members of the Duarte City Council

From: Karen A. Herrera, Deputy City Manager

Date: 6/20/12

Re: Approval of Amendment No. 1 to the Services Agreement Between the City of Duarte and Levon Yotnakhparian for City Council Meeting Cable Casting/Internet Viewing

Recommendation: City Staff is recommending that the City Council approve and authorize the City Manager to execute on behalf of the City Amendment No. 1 to the existing services agreement between Levon Yotnakhparian and the City of Duarte for City Council meeting cable casting and internet viewing services.

Discussion: Since January of 2001, the City of Duarte has been in a service agreement with the Levon Yotnakhparian for City Council meeting Cable Casting services. Consistent with all City contractors, as part of the recent 2012-13 budget process, City Staff negotiated a lower rate for the services provided. Thus, the meeting rate per month per meeting for these services with Mr. Yotnakhparian was reduced from \$1100 per meeting to \$800 resulting in an approximate \$600 per month or \$7200 per year savings.

The amendment also reflects the following contract changes: reducing the 90 day termination clause to 45 days which is more in line with the City's standard professional services agreements; a back up plan in the event additional community center cameras break down resulting in Mr. Yotnakhparian providing mobile camera equipment to complete the taping and, establishing a 72 hour timeframe to upload Council meetings to the DCTV website.

Fiscal Impact: The approximate cost of the 12-month services agreement is \$18,400 reflecting 23 City Council meetings. This is a reduction of approximately \$600 per month or \$7200 per year from the original agreement dated January 9, 2001.

ATTACHMENTS:

Amendment No. 1 – Attachment A

Services Agreement between the City of Duarte and Levon Yotnakhparian, January 9, 2001 – Attachment B

**AMENDMENT NO. 1 TO AGREEMENT
BY AND BETWEEN
THE CITY OF DUARTE AND LEVON YOTNAKHPARIAN**

THIS AMENDMENT NO. 1 TO AGREEMENT ("Amendment No. 1") by and between the CITY OF DUARTE, a municipal corporation ("City"), and LEVON YOTNAKHPARIAN, an individual ("CONTRACTOR"), is made and entered into as of June 26, 2012 ("Effective Date").

RECITALS:

A. City and Contractor entered into that certain Agreement dated January 9, 2001 ("Agreement"), a copy of which is attached hereto as Exhibit "A".

B. City and Contractor desire to amend the Agreement as set forth below.

AMENDMENT:

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the City and Contractor agree as follows:

Section 1. Recitals Incorporated. The foregoing Recitals are incorporated herein and made a part hereof.

Section 2. Amendments to Agreement. The Agreement is amended as follows:

A. Add the Clause **TERM**

This Agreement shall commence on the Effective Date and shall remain and continue in effect until June 30, 2013 unless sooner terminated pursuant to the provisions of this Agreement. The term may be extended upon execution of a written amendment between the parties.

B. In the section titled "Contractor shall perform the following services," replace No. 2 with the following:

City Meetings: Provide staff and production support to telecast at City's discretion any and all regular and special, non-study session City Council meetings, throughout the year with a minimum of two (2) meetings each month of the City's choice being telecast. Additions to the minimum meeting coverage will be requested by the City and agreed to on a case by case basis between Consultant and the City. All meetings will be taped and available for broadcast within 24 hours and on the DCTV website within 72 hours. At such time the City has the infrastructure in place to broadcast meetings live, Consultant will do this, with additional showings available after 48 hours. Consultant will encode and index City Council meetings for use on the web.

C. Replace No. 1 on page 2 with the following:

1. City agrees to pay Contractor, One Thousand Six Hundred dollars per month based on the filming of two (2) meetings per month at Eight Hundred dollars (\$800) per meeting. If the City Council is not meeting for any reason, the Contractor will not be paid for that

meeting. The amount shall constitute full reimbursement to Contractor for all direct and indirect costs incurred including compensation of Contractor's employees.

D. Replace Termination language on Page 2 with the following:

1. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving 45-day written notice upon Consultant. Upon presentation of such notice, Contractor may continue to work through date of termination and shall be paid value of work performed during this period.

E. Add to first recital, under the second No. 4 on Page 2 with the following:

1. In the event of a breakdown of telecast equipment, provide camera and/ or cameras to shoot the regular or special session of the City Council during the requested period at no additional costs to the City.

Section 3. No Other Amendments. Except as set forth above, the Agreement shall remain in full force and effect.

Section 4. Effective Date. The Effective Date of this Amendment No. 1 shall be the latest of the dates set next to the signatures of the parties hereto, which latest date shall be inserted into the preamble to this Amendment No. 1.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Amendment No. 1 to be effective as of the Effective Date.

CONTRACTOR

Date: _____

By: _____
Levon Yotnakhparian

CITY OF DUARTE

Date: _____

By: _____
Darrell J. George, City Manager

ATTEST:

Marla Akana, City Clerk

APPROVED AS TO FORM:

Dan Slater, City Attorney

EXHIBIT "A"

AGREEMENT

[SEE FOLLOWING PAGES]

EXHIBIT "A"

AGREEMENT

This agreement is made and entered into as of the 9th day of January, 2001 by and between the CITY OF DUARTE, a municipal corporation, hereinafter referred to as "CITY," and LEVON YOTNAKPARIAN, an individual, hereinafter referred to as "CONTRACTOR."

WHEREAS, City has determined that public participation in local government activities will be enhanced by the cablecasting of City Council meetings; and

WHEREAS, City has a need for technical assistance in the design, acquisition, and installation of cablecasting equipment; and

WHEREAS, City requires assistance with the production for the broadcast of City Council meetings; and

WHEREAS, from time to time the City may have other events it wishes to broadcast, or the need for additional technical assistance with other cablecasting issues; and

WHEREAS, Contractor has the background and expertise to provide such assistance, including working with Duarte Public Access Television and the Duarte Unified School District's Regional Occupation Program;

NOW THEREFORE, City and Contractor, for the consideration herein described, do mutually agree as follows:

Contractor shall perform the following services:

1. Contractor shall meet with City staff and consultant(s) and provide assistance as directed for the design, acquisition, and installation of a system to cablecast City Council meetings.
2. Contractor shall provide services as needed for the production of audio-visual tapes suitable for the broadcast of all regularly scheduled City Council meetings. Broadcast tapes shall be provided to Duarte Public Access Television the day immediately following each meeting. In the event that the City elects to initiate live broadcasts, Contractor shall make all necessary adjustments to his work effort.
3. With City approval, Contractor may provide other services, as needed, including the production of audio-visual tapes for special meetings and events.
4. For the purpose of the services contemplated by this Agreement, Contractor shall report to and shall take direction from the City Manager or the City Manager's designee.

1. Contractor shall be paid a fee of \$1,100.00 for production for cablecasting of each regularly scheduled City Council meeting. This amount shall constitute full reimbursement to Contractor for all direct and indirect costs incurred including compensation of Contractor's employees.
2. Contractor will be paid on a time and materials basis for any work authorized by the City outside the scope of Section 1 above. Contractor's time shall be compensated at the rate of \$25.00 per hour.
3. In the event that City requires Contractor to provide services for special meetings or events, or for matters not contemplated in Sections 1 and 2 above, City and Contractor shall undertake good faith negotiations to determine consideration.
4. Contractor shall invoice City for services rendered on a bimonthly basis. Invoices shall contain a summary of services rendered and corresponding dates.

City shall provide the necessary audio-visual equipment, tapes, and working space for Contractor to perform services. City shall also supply other materials and supplies that are reasonably necessary to the performance of the work required.

This agreement may be terminated by either party upon the provision of ninety (90) days written notice. Upon the presentation of such notice, Contractor may continue to work through the date of termination. Upon termination, Contractor shall be paid the value of all work performed, less payment previously made.

All tapes, documents, and reports prepared by Contractor pursuant to this agreement shall be considered the property of the City and, upon payment for services performed by Contractor, such documents and other identified materials shall be delivered to the City.

Contractor shall perform the services hereunder as an independent contractor and shall furnish such services in his own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of Contractor be considered as an employee City.

This Agreement is not assignable either in whole or in part by Contractor without the written consent of City.

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall also govern the interpretation of this Agreement.

Contractor hereby agrees to, and shall hold City, its elective and appointed boards, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from Contractor's negligent acts, errors, or omissions under this Agreement. Contractor agrees to and shall defend City and its elective and appointive boards, officers, agents, and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors, or omissions.

City hereby agrees to, and shall hold Contractor, its officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from City's negligent acts, errors, or omissions under this Agreement. City agrees to and shall defend Contractor and its officers, agents, and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors, or omissions.

All notices required by this Agreement shall be given to City and Contractor in writing, by first class mail postage prepaid, addressed as follows:

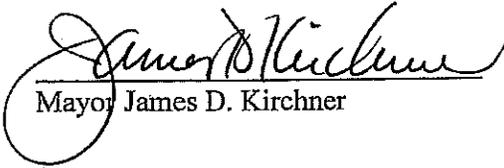
City: Assistant City Manager
City of Duarte
1600 Huntington Drive
Duarte, California 91010

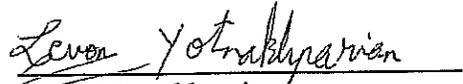
Contractor: Levon Yotnakhparian
495 Royal View Street
Duarte, California 91010

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date entered above by their duly authorized officers.

CITY OF DUARTE:

CONTRACTOR:


Mayor James D. Kirchner


Levon Yotnakhparian

Agenda Memo City Manager's Office

To: Mayor and Members of the Duarte City Council
From: Karen A. Herrera, Deputy City Manager
Date: June 26, 2012
Subject: Approval –Agreement for Professional Services with Barrow/Hoffman Public Relations

Recommendation

It is recommended that the City Council approve and authorize the City Manager to execute a professional services agreement with Barrow/Hoffman Public Relations that would extend the contract through June 30, 2013 at the rate of \$2500 per month plus authorized reimbursable expenses.

Background

Barrow/Hoffman Public Relations was founded in 1983 and has been working with the City of Duarte for more than fifteen years in the area of public relations and community promotions. The services for which Barrow/Hoffman has provided the City of Duarte have included, among other things; media contact and relations; preparation and distribution of public information materials and news releases; and the promotion and generation of media coverage on City news, events, and activities.

The current agreement is set to expire on June 30, 2012 at a cost of \$3,000 (including miscellaneous expenses) per month for up to 42 hours of services per month. Due to ongoing budget reductions, the contract was reduced to \$2500 per month for approximately 33 hours of service per month. Consultant is required to submit monthly invoices and reports to the City showing actual services performed.

Fiscal Impact

Barrow/Hoffman contractual costs were approved as part of the FY 12-13 budget in the total of \$30,000.

Attachment - Contract

CITY OF DUARTE

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and effective as of July 1, 2012 ("Effective Date"), by and between the **CITY OF DUARTE**, a municipal corporation ("City") and **MARY BARROW dba BARROW/HOFFMAN PUBLIC RELATIONS** ("Consultant"). City and Consultant may sometimes herein be referred to individually as a "party" and collectively as the "parties."

AGREEMENT:

In consideration of the mutual covenants and conditions set forth herein the foregoing Recitals which are incorporated herein and made a part hereof, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. TERM

This Agreement shall commence on the Effective Date and shall remain and continue in effect until June 30, 2013 year unless sooner terminated pursuant to the provisions of this Agreement. The term may be extended upon execution of a written amendment between the parties.

2. SERVICES AND PERFORMANCE

- A. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services set forth in the "Scope of Services" attached hereto as **Exhibit "A"** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder.
- B. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder.
- C. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without the prior written approval of City, which may be given or withheld at City's sole and absolute discretion, Consultant shall not (i) contract with any other entity to perform in whole or in part the services required hereunder, or (ii) transfer, assign, convey, or encumber (voluntarily or by operation of law) this Agreement.
- D. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.
- E. Consultant shall provide all services rendered hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included, and this Agreement shall be read and enforced as though they were included.

3. MANAGEMENT

- A. The City's City Manager shall represent City in all matters pursuant to the administration of this Agreement, review and approval of the services performed by Consultant, including the authority, subject to the limitations set forth in Section 4, to enlarge the Scope of Services or increase the compensation due to Consultant.
- B. Consultant communications with the City shall be routed through the Deputy City Manager and authorized City staff.

4. COMPENSATION

- A. City agrees to pay Consultant, in accordance with the payment rates and terms set forth in Exhibit "B" and incorporated herein by this reference; provided, however, that in the event of any inconsistency between the terms of Exhibit "B" and the main text of this Agreement, the main text of this Agreement shall apply. Subject to the Deputy City Manager's authority set forth in subparagraph (B) below, the total compensation paid to Consultant hereunder shall not exceed THIRTY THOUSAND DOLLARS (\$30,000) ("Total Compensation") for the total term of this Agreement, which shall be payable in TWELVE (12) monthly installments of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2500.00) as set forth in Paragraph 4.C below. Consultant's Total Compensation shall be based on *33 hours per calendar month* and shall not include out-of-pocket expenses necessary for the performance of the services, such as those listed in Exhibit "B", subject to the reasonable approval of the City. Such out-of-pocket expenses shall not, however, include (a) costs associated with the operation of Consultant's business, including but not limited to administrative costs, employee costs, overhead, insurance costs (including but not limited to the cost to provide the insurance required by this Agreement), cost of benefits, rent, and costs to procure required permits or licenses, or (b) extraordinary expenses unless Consultant, *prior to* incurring such extraordinary expenses notified City in writing and City determines such expenses are extraordinary and authorizes Consultant to incur such expenses, in which case City shall be responsible to reimburse Consultant for such extraordinary expenses. Consultant shall perform all or some services in a given month as assigned by City. If the time required to perform the assigned services would otherwise cause the compensation, if calculated on an hourly rate basis to exceed the total monthly compensation, Consultant must notify City in writing prior to incurring those expenses. The City will approve or disapprove the request in the City's sole discretion.
- B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance by the Deputy City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by Deputy City Manager and Consultant at the time City's authorization is given. The Deputy City Manager may approve additional work up to but not exceeding ten percent (10%) of the amount of this Agreement.
- C. Consultant shall be paid on a monthly basis in TWELVE (12) equal installments of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2500.00) each, provided that Consultant submits monthly invoices as set forth in Paragraph A of *Exhibit B hereto* and submits monthly reports to City showing actual services performed. Consultant shall be paid on the next regular council warrant after all required paperwork is submitted. If the City

disputes whether Consultant has earned its fee or any portion, City shall give written notice to Consultant within thirty (30) days of receipt of Consultant's monthly report stating the basis for such dispute.

5. SUSPENSION OR TERMINATION OF AGREEMENT

- A. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving written notice upon Consultant. Upon receipt of said *notice*, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. In the event this Agreement is suspended or terminated pursuant to this subparagraph (a), Consultant shall submit a final report to the City pursuant to Section 4, and Consultant shall be entitled to the pro rata portion of the fee earned to the date of termination, or if the reason for the termination is failure by Consultant to have timely performed the services set forth in Exhibit "A", City shall be entitled to receive a return of the fee paid to Consultant, or applicable portion thereof. In City's sole and absolute discretion, prior to effecting a suspension or termination pursuant to this subparagraph (a), the City may first serve upon the Consultant a written notice of the default specifying the default and the amount of time that Consultant shall have to cure, correct, or remedy the default. In the event that the Consultant fails to cure the default within the specified period of time, the City shall have the right to immediately terminate this Agreement pursuant to subparagraph (a). Notwithstanding any other provision of this Agreement to the contrary, City's termination of this Agreement pursuant to this subparagraph (a) shall not preclude or prejudice any other remedy to which City may be entitled in law or in equity.
- B. Consultant may terminate this Agreement upon not less than thirty (30) days' prior written notice to the City.

6. RECORDS AND OWNERSHIP OF DOCUMENTS

- A. Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to produce an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to examine and audit such books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of six (6) years after receipt of final payment.
- B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. Consultant shall provide such items to City promptly upon completion of the Agreement. Any use of such documents for other projects by the City shall be without liability to Consultant.

- C. Any information gained by Consultant in the performance of this Agreement shall be considered confidential and such information and the reports, records, documents and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly or to any other client of Consultant without the prior written approval of the Deputy City Manager.

7. INDEMNIFICATION

Consultant shall defend, indemnify and hold harmless the City from and against all damages and liability caused by the negligent actions or willful misconduct of the Consultant or its employees, agents, or representatives. Consultant shall not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the City or any of its employees, agents, or representatives acting in an official capacity.

8. INSURANCE

Without limiting Consultant's indemnification obligations as set forth in this Agreement, the Consultant shall procure and maintain, at its sole cost and expense, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

- A. Commercial General Liability insurance written on a per occurrence basis in an amount not less than \$1,000,000 per occurrence.
- B. Business Auto Coverage written on a per accident basis in an amount not less than \$1,000,000 per accident. If Consultant or Consultant's employees use personal autos in connection with the performance of work under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.
- C. If applicable, Worker's Compensation insurance providing statutory benefits as required by California law.
- D. All of the insurance policies required hereunder, except the worker's compensation insurance, shall comply with the following requirements:
 - (i) All insurance shall be written by insurers that are admitted and licensed to do business in the State of California and with A.M. Bests rating of B++ or better and a minimum financial size VII.
 - (ii) The policies shall be endorsed to name the City and its officers, officials, employees, agents, and volunteers as additional insureds.
 - (iii) All of Consultant's insurance: (i) shall contain no special limitations on the scope of protection afforded to the additional insureds; (ii) shall be primary insurance and any insurance or self-insurance maintained by the additional insureds or any of them shall be in excess of the Consultant's insurance and shall not contribute with it; (iii) shall be "occurrence" rather than "claims made" insurance except for professional liability; (iv) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (v) shall prohibit Consultant from waiving the right of subrogation prior to a loss except for professional liability; and (vi) shall not contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any

exclusion for bodily injury to an employee of the insured.

(iv) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change.

- E. Consultant shall renew the required coverage annually as long as City or its employees or agents face an exposure from the Consultant's operations pursuant to this Agreement. This obligation shall survive the termination or expiration of this Agreement and shall not be effective until City executes a written statement to that effect.
- F. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance are reasonably approved by the City. Certificates are to reflect that the insurer will provide 30 days written notice to City of any cancellation of coverage. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, the Consultant shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this Paragraph 8.
- G. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- H. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve City.

9. INDEPENDENT CONSULTANT

- A. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, officials, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.
- B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. NO UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in

concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City shall receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement.

11. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to the Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the services performed under this Agreement.

12. COVENANT AGAINST DISCRIMINATION

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

13. NONLIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

14. NOTICES

Any notices which either party may desire to give or may be required to give to the other party under this Agreement must be in writing and may be given either by (a) personal service, or (b) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (c) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

If to City:	City of Duarte City Manager's Office 1600 Huntington Drive Duarte, CA 91010
If to Consultant:	Mary Barrow Barrow/Hoffman Public Relations 2998 Hacienda Drive Duarte, CA 91010

15. GOVERNING LAW; ATTORNEY'S FEES; LITIGATION MATTERS

The internal laws of the State of California, without regard to principles of conflicts of laws, shall govern the interpretation of this Agreement. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall Consultant be entitled to economic or consequential damages or to punitive damages. In the event of any litigation arising from or related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including staff time, court costs, attorney fees, expert witness fees, and other related expenses. The Municipal and Superior Court of the County of Los Angeles shall have exclusive jurisdiction over any litigation between the parties hereto concerning this Agreement. Service of process on City shall be made in the manner required by law for service on a public entity. Service of process on Consultant shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

16. RIGHTS AND REMEDIES ARE CUMULATIVE; AND WAIVER

- A. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- B. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

17. SEVERABILITY

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

18. INTERPRETATION; ENTIRE AGREEMENT

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

19. EXECUTION OF CONTRACT

The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

20. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date set next to the signature of the City Manager below, which date shall be inserted into the preamble of this Agreement.

[end –signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement as of the Effective Date.

<p>CITY OF DUARTE</p>	<p>CONSULTANT: MARY BARROW dba BARROW/HOFFMAN PUBLIC RELATIONS</p>
<p>By: _____ Darrell George, City Manager</p>	<p>By: _____ Mary Barrow</p>
<p>Date: _____</p>	<p>Date: _____</p>
<p>ATTEST: _____ Marla Akana, City Clerk</p>	
<p>APPROVED AS TO FORM: RUTAN & TUCKER, LLP _____ Dan Slater, City Attorney</p>	

EXHIBIT "A"

SCOPE OF SERVICES

PUBLIC RELATIONS SERVICES

SCOPE OF SERVICES

Services which are normal and customary in the industry, including, but not limited to: Media contact and media relations; Prepare and distribute public information materials including news releases; Prepare newsletters and advertisements, as required; Coordinate promotional events and activities; Promote and generate media coverage of City news, events and activities; Arrange/coordinate media interviews, attend council meetings and other civic events, as requested by Deputy City Manager, for the purpose of assisting with the handling of public information/media relations.

EXHIBIT B

PAYMENT RATE & TERMS

- A. The City of Duarte shall pay monthly installments of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2500.00) toward the Total Compensation. Invoices for this monthly installment shall be submitted to City by Consultant on the first of each month, commencing on July 1, 2012, along with an itemized invoice of reimbursable expenses incurred in the prior month together with appropriate documentation for such reimbursable expenses. Payment for reimbursable expenses shall be subject to the reasonable approval of the City. Payment for expenses incurred in the final month of the Agreement (i.e., June 2012) shall be paid either, at City's discretion, on or about June 30, 2012, or in July 2012.
- B. Reimbursable expenses include: telephone calls, messenger and delivery services, postage, mileage, photocopying (at a per page rate approved by City), and other reasonable expenses.

Agenda Memo City Manager's Office

To: Mayor and Members of the Duarte City Council
From: Karen A. Herrera, Deputy City Manager
Date: 6/21/12
Re: **Services Agreement and Lease Agreement Approvals Between the City and the Duarte Chamber of Commerce**

Recommendation: City Staff is recommending that the City Council approve and authorize the City Manager to execute on behalf of the City both the 2012-13 *Services Agreement in the amount of \$35,050* and the Building Lease Agreement in the amount of \$150 per month generating \$1800 annually with the Duarte Chamber of Commerce.

Background: For over four decades, the City of Duarte has entered into service and/or lease agreements with the Duarte Chamber of Commerce to work in support and promotion of the Duarte business community. Historically, the Chamber has faithfully, and with good results executed these services outlined in the agreements. The last agreement executed between the two entities was for the period of July 1, 2011 to June 30, 2012 in the amount of \$40,050. The last building lease agreement, on the other hand, was at a \$150 per month rate and was executed in on July 1, 2007 and expired on June 30, 2011.

The reasoning for not extending the lease agreement at the same time as the last services agreement in June of 2011 was because as part of the 2011-2012 workshop, the City Council authorized staff to pursue the relocation of the Duarte Chamber of Commerce from its 1105 Oak Street location to its current location of 1644 Third Street. This move was in order to facilitate the relocation of the Public Safety Department from its current location at the Mountain View Plaza to the 1105 Oak Street location. The relocation of the Chamber took place in December of 2011 and staff is still exploring the financial viability of the relocation of the Public Safety operation to the Oak Street location.

- **Services Agreement Discussion:** Prior to the recent budget workshop, the City and Chamber staffs discussed the City's limited financial resources for the upcoming fiscal year and the need to reduce the Chamber's budget by \$5,000 per year due to the elimination of redevelopment by the State Legislature. The Chamber agreed to the reduction and will continue to work collaboratively with the City on such key areas as the development and coordination of the Business Visitation Program; working with the Foothill Workforce Investment Board and continuing the business luncheon program.

Traditional Services, performed include but are not limited to:

- Maintaining regular office hours with qualified personnel;
- Favorably advertising Duarte as a place to do business and highlight advantages of the City;
- Conferring with businesses to do business in Duarte;
- Welcoming new businesses to town;
- Conducting programs such as seminars to help local businesses;
- Providing financial and activity reports to the City of Duarte;
- Including news and other information provided by the City in its various publications;

- Providing commissioner recommendations for two City Commissions, i.e. Public Safety/EDC

Lease Agreement Discussion: The annual lease for between the City of Duarte and the Duarte Chamber of Commerce is for approximately 817 sq. ft. of office space at 1644 Third Street for a period of one year terminating on June 30th 2013. Highlights of the lease include a continuing monthly payment of \$150; City payment of all utility charges, with the exception of cable, telephone and internet; million dollar insurance coverage policies in the areas of liability, auto, property and workers compensation, and a one year term to coincide with the Services Agreement approval process.

Fiscal Impact: The total of the 12-month services agreement is \$35,050. The appropriation of funds to Account #1020-7710 for \$35,050 was adopted as part of the FY 2012-13 budget process. Annual compensation will be paid in two installments; one prior to July 30th and the other prior to January 30th 2013. The Chamber of Commerce will continue to pay the City \$150 per month for the use and occupancy of 1644 Third Street, Duarte, CA. Revenue derived from the lease is approximately \$1800 per fiscal year.

ATTACHMENTS:

Attachment A - Chamber Services Agreement 2012-13

Attachment B - Chamber Lease Agreement 2012-13

**SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF DUARTE AND THE DUARTE CHAMBER OF COMMERCE**

This Services Agreement is made and entered into as of July 1, 2012 ("Effective Date"), by and between the City of Duarte, California, a municipal corporation (hereinafter referred to as "City"), and the Duarte Chamber of Commerce, a California corporation (hereinafter referred to as "Chamber").

RECITALS:

WHEREAS, the City and Chamber desire to work collaboratively in the support and promotion of the Duarte business community; and

WHEREAS, the City and Chamber agree that only by working collaboratively can they serve the needs of the business community, create an environment where business can succeed and prosper, and enable all members of the community to benefit from the results.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein and made a part hereof, and of the mutual promises and covenants hereinafter contains, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **AGREEMENT TERM; COMPENSATION.** This Agreement shall be effective for the period July 1, 2012 through June 30, 2013 ("Agreement Term"). The City shall pay the Chamber the sum of \$35,050 ("Compensation") for the Agreement Term for the services set forth herein. The Compensation shall be paid in two installments; the first by July 30, 2012 and the second by January 30, 2013.

The Chamber shall place the Compensation set forth in Section 1 in a separate account from other Chamber revenues and not utilize the Compensation to pay for the cost of fabricating, producing, printing, mailing, or distributing any tangible item including Chamber publications, including but not limited to newspapers such as and including the Duarte View, newsletters, flyers, or any DVDs, CDs, or videotapes which would constitute a "mass mailing" under Government Code Section 89001 as defined by Section 18901 of the Regulations of the Fair Political Practices Commission of the State of California (2 C.C.R. § 18901)."

2. **SERVICES**

- A. The Chamber agrees to provide the following services listed below and the additional services listed on Exhibit "A" which is incorporated herein:

- 1) Maintain regular office hours with qualified personnel.

- 2) Favorably advertise Duarte as a place to do business and extol advantages of the City.
- 3) Confer with businesses to do business in Duarte.
- 4) Welcome new businesses to town.
- 5) Conduct programs such as seminars to help local businesses.
- 6) Provide the Chamber's financial statements to the City.
- 7) Include news and other information provided by the City in its various publications.

B. To implement the services set forth in Paragraph A, the Chamber, among its other activities, shall provide the following specific services:

- 1) Referral Service – The Chamber shall recommend its members to callers asking for goods and services.
- 2) Publicity and Promotion - Activities include Chamber mixers, ribbon-cutting business openings, announcements by email, publication of Business Directory, Duarte View and Duarte map.
- 3) Networking – The Chamber shall establish Committees and present various Chamber functions provide members with an opportunity to meet and work with other members of the business, civic, and residential community.
- 4) Information – The Chamber office shall provide all who inquire with information about business opportunities within the City, and shall respond to a variety of queries from the general public regarding the community. The Chamber shall update and provide on-line updated lists such as a Church Directory and a Community Organization Directory, which are available to the public.
- 5) Advertising – The Chamber, through the Duarte View, Duarte map, the Chamber website, email, and the Duarte Business Directory, shall provide businesses with a means of advertising their goods, discounts and services to the local community.
- 6) Seminars/Workshops – The Chamber shall provide members of the business community with help and insight into business matters. Special programs and activities shall be developed to answer the needs of local businesses and assist members in their efforts to be successful.

C. The following additional terms are hereby agreed to by Chamber and City:

- 1) That the Chamber is a business organization.

- 2) That the Chamber is the voice and the advocate for its members and, as such, is charged with the responsibility of keeping its members informed and updated on issues that affect the business community.
- 3) That it is appropriate for the Chamber to speak on behalf of its members and advocate the interests, desires, and concerns of its members.
- 4) That the Chamber will provide its members with a forum for the discussion of issues affecting the business community.
- 5) That as an organization representing the business community, the Chamber is bound to bring to the attention of the City its organizational positions on issues of importance to its members.
- 6) That through discussion, led by a mutual desire to work harmoniously together, the City and the Chamber will endeavor to seek avenues for consensus and solutions to problems that negatively impact the local business community.
- 7) That despite the best efforts on the parts of the City and the Chamber, there will be times when the City and the Chamber may take adverse positions. The parties agree when the City and Chamber disagree on issues to do so with respect for differing opinions and positions.
- 8) The Chamber shall not endorse City Council candidates for election.

3. TERMINATION. This Agreement shall automatically expire upon conclusion of the Agreement Term. This Agreement may be earlier terminated by either party giving the other written notice of the desire to terminate the Agreement sixty (60) days prior to the intended date of termination; provided, however, that if the termination is due to a material breach by a party of the terms of this Agreement, and such breach remains uncured for a period of thirty (30) days after written notice is given to the party in breach, then the sixty (60) day period shall not apply and the termination may, at the discretion of the non-breaching party, be effective immediately upon delivery of written notice of termination to the breaching party following the aforescribed thirty (30) day cure period. In the event of termination, the Chamber shall be entitled to a pro-rata share of the unpaid and due Compensation earned to the earlier of (i) the date of termination or (ii) the date of uncured breach. Subject to the foregoing, the rights, duties, and responsibilities of both the City and the Chamber under this Agreement shall continue until the date of termination.

4. CALIFORNIA LAW. This Agreement shall be governed by the internal laws of the State of California without regard to principles of conflicts of law.

5. LITIGATION MATTERS; ATTORNEY'S FEES. The internal laws of the State of California, without regard to principles of conflicts of laws, shall govern the interpretation of this Agreement. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel

specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall Chamber be entitled to economic or consequential damages or to punitive damages. In the event of any litigation arising from or related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including staff time, court costs, attorney fees, expert witness fees, and other related expenses. The Municipal and Superior Court of the County of Los Angeles shall have exclusive jurisdiction over any litigation between the parties hereto concerning this Agreement. Service of process on City shall be made in the manner required by law for service on a public entity. Service of process on Chamber shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

6. MANAGEMENT. The City's City Manager and Chamber's President/CEO shall represent City and Chamber, respectively, in all matters pursuant to the administration of this Agreement. The Chamber's communications with the City shall be routed through the City Manager and authorized City staff.

7. RECORDS. Chamber shall provide the City with (i) a copy of its monthly financial report which shall include at a minimum a balance sheet a income/expenses statement, and (ii) a quarterly activity report.

8. INDEMNITY. Chamber shall indemnify, defend, and hold harmless the City from and against all damages and liability caused by the negligent actions or willful misconduct of the Chamber, or its officer, officials, employees, agents, or representatives acting in an official capacity. Chamber shall not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the City, or any of its officers, officials, employees, agents, or representatives acting in an official capacity.

9. INSURANCE. Without limiting Chamber's indemnification obligations as set forth in this Agreement, the Chamber shall procure and maintain, at its sole cost and expense, during the entire term of this Agreement including any extension thereof, the following policies of insurance: (a) Commercial General Liability insurance written on a per occurrence basis in an amount not less than \$1,000,000 per occurrence; (b) Business Auto Coverage written on a per accident basis in an amount not less than \$1,000,000 per accident (if Chamber has owned or leased vehicles), and if Chamber's employees use personal autos in connection with the performance of work under this Agreement, Chamber shall provide evidence of personal auto liability coverage for each such employee; and (c) if applicable, Worker's Compensation insurance providing statutory benefits as required by California law. All of the insurance policies except the personal auto policies and Worker's Compensation policies, shall be endorsed to name City and its officers, officials, employees, agents, and representatives as additional insureds. No work or services under this Agreement shall commence until the Chamber has provided the City with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance are reasonably approved by the City. Certificates are to reflect that the insurer will provide 30 days written notice to City of any cancellation of coverage. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, the Chamber shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this Paragraph. Chamber agrees to provide immediate notice to City of any claim or loss against Chamber arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve City.

15. REPRESENTATIONS AND WARRANTIES. The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed this instrument to be effective as of the Effective Date.

CITY OF DUARTE

John Fasana, Mayor

ATTEST:

Marla Akana, City Clerk

APPROVED AS. TO FORM:
Rutan & Tucker, LLP

Dan Slater, City Attorney

DUARTE CHAMBER OF COMMERCE

James Kirchner, President/CEO

Exhibit A

City of Duarte and the Duarte Chamber of Commerce Services Agreement

Business Development/Economic Development Component

- Expand Chamber member exposure to the overall business community, and beyond, through enhanced features of the DuarteChamber.com web site, such as
 - A free web page within the DuarteChamber.com domain
 - A free domain name and email address for Chamber members who don't have one
 - The ability to post Member to Member Discount coupons
 - The ability to post their own specials, menus, coupons, etc. and easily change them on their own web site.
 - Have a page available for links to businesses who are posting employment opportunities.
- Meet monthly with designated City Representative to establish a renewed partnership with City Hall.
- Formally develop and coordinate the Business Visitation Program involving the Chamber, City Hall and a designated business.
- Periodically conduct a meaningful survey of Chamber members to seek their suggestions, recommendations, and requests for business-related topics they feel will be of benefit to them.
- Work with the Foothill Workforce Investment Board and identify and collaborate on programs and seminars that will benefit Duarte businesses.
- Notify Chamber members and all Duarte businesses in general through mail, email blast, the Duarte View and the DuarteChamber.com web site of the available programs and seminars.
- Provide seminars on a current, business related topics available to all Duarte businesses and Duarte Chamber members at no cost to the attendees. Such seminars would be held at the Duarte Community Center with no facility costs incurred by the Chamber.
- Strive to be the Resource Center for Duarte by marketing the Duarte Chamber website as the first place to go to for information and make the Chamber's Event Calendar available to all community groups and Chamber members to announce their special events.
- Provide the City with recommendations for designated Commission appointments. Specifically, two representatives for the Economic Development Commission and one for the Public Safety Commission.
- Provide a representative to regularly attend Duarte Cable Television Board meetings.

**BUILDING LEASE
CITY OF DUARTE & DUARTE CHAMBER OF COMMERCE**

THIS BUILDING LEASE ("Lease") is made and entered into as of July 1, 2012 ("Effective Date") by and between the City of Duarte, a municipal corporation (hereinafter "Landlord" or "City"), and Duarte Chamber of Commerce, a non-profit California corporation ("Tenant").

RECITALS:

A. Landlord is the owner of record of the real property and improvements located at 1105 South Oak Street, City of Duarte, County of Los Angeles, State of California (the Property").

B. Tenant is in need of a place to conduct its business operations within the City of Duarte.

C. Landlord desires to lease to Tenant and Tenant desires to lease from the Landlord a portion of the Property ("the Premises"), as hereinafter more fully described, on the terms and conditions in this Lease.

LEASE:

Now, therefore, in consideration of the terms, covenants and conditions contained herein, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, landlord and tenant hereby agree as follows:

**ARTICLE 1
SUBJECT OF LEASE AND POSSESSION OF THE PREMISES**

1.1 The Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, which constitute approximately 817 sq. ft. of rentable space within the Property on the terms and upon the agreements, covenants and conditions set forth in this Lease.

1.2. Acceptance of the Premises. Except as may be otherwise herein provided, Tenant shall, by entering into and occupying the Premises, be deemed to have accepted the Premises, and to have acknowledged that the same is then in the condition called for by this Lease and is fit for operation as office space.

1.3 Quiet Enjoyment. Except as expressly provided under this Lease, Tenant, upon performing and complying with all covenants, agreements, warranties, terms, and conditions of this Lease to be performed, or complied with by Tenant, shall lawfully and quietly hold, occupy and enjoy the exclusive use of the Premises during the Term (as defined in Article 2) of this Lease, without hindrance by Landlord, or any person or persons claiming through Landlord.

1.4 Surrender of the Premises and Equipment. Upon the expiration or termination of the Term of this Lease, Tenant shall peaceably and quietly leave and surrender the Premises to Landlord, broom clean and in good order, condition and repair, reasonable wear and tear and obsolescence excepted. Tenant shall remove all movable fixtures, all equipment, and all personal property in, on, or about the Premises. Surrender and restoration of the Premises by the Tenant shall include the removal of any Tenant exterior signage, restoration of any other improvements bearing the Tenant's name, logo or similar identifying features to their original appearance.

ARTICLE 2 TERM

2.1 Commencement and Duration. The term ("Term") of this Lease shall commence as of July 1, 2012 and shall continue thereafter for a one (1) year term, terminating (unless sooner terminated by the terms of this Lease or by operation of law), on June 30, 2013.

2.2 Inability to Use Premises. If any law or regulation of any governmental entity prohibits Tenant from using the Premises as provided herein, Tenant may elect to terminate this Lease on thirty (30) day written notice to Landlord specifying the governmental entity and the law and/or regulation thereof that prohibits its use of the Premises.

ARTICLE 3 RENT

3.1 Rent Payment. Tenant shall pay, without demand or delay, abatement, deduction, or offset, the Rent in such amounts as provided in this Article 3.

3.2 No Security Deposit. Landlord and Tenant acknowledge and agree that Tenant is not required to post a security deposit for the lease of the Premises pursuant to this Lease.

3.3 Monthly Rent. Tenant shall pay to Landlord as rent for the use and occupancy of the Premises, ONE HUNDRED FIFTY DOLLARS (\$150.00) per month during the Term, in lawful money of the United States ("Monthly Rent"). Rent shall be due on the 1st of each month, unless the 1st of the month is a Friday, Saturday, Sunday, or a holiday when Duarte City Hall is closed for business, in which case the Rent shall be due on the immediately succeeding business day.

3.4 Payment. All payments required to be made by Tenant to Landlord under this Lease shall be made without any setoff, deduction or counterclaim whatsoever and shall be made by check, payable to the "City of Duarte" and delivered to the City at 1600 Huntington Drive, Duarte, California 91010, Attn: Director of Administrative Services. Landlord may designate in a written notice to Tenant any change to the above.

3.5 Late Charges; Lease Termination. Any Rent not paid to Landlord within ten (10) days of the due date under this Lease shall be subject to a late fee of ten percent (10%) of the amount then owing. The parties understand and agree that the late fee is a fair and reasonable estimate of the cost of the late payment to Landlord. Notwithstanding the above, the parties also understand and agree that persistent and chronic late payments are disruptive and costly to

Landlord, requiring Landlord to devote additional time, money, resources and energy to the administration of this Lease, all of which can not be sufficiently reimbursed to Landlord by way of Tenant's payment of the late fee. Therefore, Tenant's failure to timely pay any Rent for three (3) consecutive months, or four (4) months during any twelve (12) month period, shall be deemed a material and incurable default under this Lease, giving rise to Landlord's right, in its sole discretion, to terminate this Lease upon sixty (60) days notice. Landlord's decision not to exercise this remedy at any time during the Term of this Lease shall not act to waive Landlord's right to exercise such remedy at a future date during the Term.

3.6 Utility and Services. With the exception of telephone, cable television, and internet service, all of which shall be directly billed to and paid for by Tenant, Landlord shall contract and pay for all utilities and services to the Premises including but not limited to electricity, gas, and water service.

3.7 Taxes, Assessments and Charges. Except as provided in Section 3.7, Landlord covenants to pay when due all applicable taxes and assessments which at any time during or in respect of the Term hereof may be levied or assessed upon the Property.

3.8 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Lease Property. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a possessory interest subject to taxation may be created, and if created and imposed that Tenant shall pay its pro-rata share of taxes upon the assessed value of the Premises and not merely the assessed value of its leasehold interest. Tenant agrees to pay these amounts as Additional Rent in the same manner and on the same schedule as the Monthly Rent.

ARTICLE 4 INDEMNIFICATION & LIENS; INSURANCE

4.1 Indemnification; Liens. Tenant shall at all times indemnify, defend, and hold Landlord, the Premises and the Property, free, clear and harmless from any claims, liens, demands, charges, encumbrances or litigation arising directly or indirectly out of any use, occupancy or activity of Tenant, or out of any work performed, material furnished, or obligations incurred by Tenant, in, upon, about or otherwise in connection with the Premises and shall pay or cause to be paid for all work performed and material furnished to the Premises which will or may result in a lien on the Property, and will keep the Property free and clear of all mechanic's liens and materialmen's liens (including the posting of an appropriate bond which shall release the lien). Tenant shall not be responsible for any damages or liabilities to the extent caused by the negligence or willful misconduct of Landlord or any of its officers, officials, employees, agents, or representatives acting in an official capacity. The foregoing shall survive the expiration or earlier termination of this Lease as to claims arising or accruing prior to the expiration or termination of this Lease.

4.2 Insurance.

4.2.1 Insurance Coverage Requirements; Evidence of Insurance. Without limiting Tenant's indemnification obligations as set forth in this Lease, Tenant shall procure and

maintain, at its sole cost and expense, during the entire term of this Lease the following policies of insurance: (a) Commercial General Liability insurance written on a per occurrence basis in an amount not less than \$1,000,000 per occurrence; (b) Business Auto Coverage written on a per accident basis in an amount not less than \$1,000,000 per accident (if Tenant has owned or leased vehicles), and if Tenant's employees use personal autos in connection with Tenant's work, Tenant shall provide evidence of personal auto liability coverage for each such employee; (c) if applicable, Worker's Compensation insurance providing statutory benefits as required by California law; and (d) Property Casualty Insurance covering the Premises against loss or damage by fire and perils commonly covered under the standard extended coverage endorsement for not less than the "full replacement cost" thereof including all improvements, fixtures, alterations, additions, and changes made by Tenant including fixtures. All of the insurance policies except the personal auto policies and Worker's Compensation policies, shall be endorsed to name Tenant and its officers, officials, employees, agents, and representatives as additional insureds. Tenant shall not possession nor occupy the Premises until Tenant has provided Landlord with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance are reasonably approved by Landlord. Certificates are to reflect that the insurer will provide 30 days written notice to Landlord of any cancellation of coverage. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, Tenant shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this Section. Tenant agrees to provide immediate written notice to Landlord of any claim or loss against Tenant. Landlord assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve Landlord.

4.2.2 Tenant's Personal Property. Tenant acknowledges and agrees that Landlord is not responsible or liable for insuring any loss caused to Tenant's personal property in, on, or about the Premises, and that Landlord hereby advises Tenant to obtain its own insurance coverage for Tenant's personal property.

4.2.3 Damages for Failure to Provide Insurance. This Section 4.2.3 is applicable only in the event that Tenant is not in compliance with the requirements to maintain insurance as set forth in this Article 4. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Premises or Property, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid. Tenant's uncured breach of the above shall be deemed a material default under the terms of this Lease giving rise to Landlord's right, in its sole discretion, to terminate this Lease.

ARTICLE 5 USE OF THE PREMISES

5.1 Permitted Use. The Premises shall be used only for the purpose of conducting Tenant's business. Tenant shall operate the business and conduct activities therein in a prudent

and businesslike manner and in full compliance with all applicable law and the terms and conditions of this Lease.

5.2 Prohibited Uses. Tenant shall not use, or allow use of, the Premises for any activity other than as office space for its business without the prior written consent of Landlord. Tenant's uncured breach of the above shall be deemed a material default under the terms of this Lease giving rise to Landlord's right, in its sole discretion, to terminate this Lease.

5.3 Signage. No signs of any kind shall be displayed unless approved by Landlord's Architectural Review Board. Landlord may require removal or refurbishment of any sign previously approved.

5.4 Compliance with Building Rules and Regulations. Tenant agrees to comply with all rules and regulations of Landlord with respect to the Property as now existing or as may be imposed during the Term (provided that any rules or regulations imposed after the commencement of the Term shall apply to Tenant only to the extent such rules and regulations do not materially interfere with Tenant's use of the Premises.

5.5 Compliance with Laws. Tenant shall not occupy or use the Premises, or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in whole or in part, for other than legal purposes, or for a purpose or in a manner liable to create a public or private nuisance or to cause structural injury to the Premises or any part thereof, or which may make it difficult, impossible or cost prohibitive to obtain fire or other insurance thereon required to be furnished by Tenant hereunder, or in violation of any certificate of occupancy or evidence of compliance issued by any governmental agency covering or affecting the use of the Property, or in violation of any ordinance or regulation of the City. Tenant's uncured breach of the above shall be deemed a material default under the terms of this Lease giving rise to Landlord's right, in its sole discretion, to terminate this Lease.

5.6 Alterations. Tenant shall not make any alterations in or about the Premises, including installation of trade fixtures and signs, without Landlord's prior written consent.. Any alterations to the Premises shall be done according to the law and with required permits. Tenant shall give Landlord advance notice of the commencement date of any planned alteration, so that Landlord, at its option, may post a Notice of Non-Responsibility to prevent potential liens against Landlord's Interest in the Premises. Landlord may also require Tenant to provide Landlord with lien releases from any contractor performing work on the Premises. All improvements installed by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may require, at termination of the Term, that any improvement not approved by Landlord be removed at Tenant's expense. Surrender and restoration of the Premises by the Tenant shall include the removal of any Tenant exterior signage, restoration of any other improvements bearing the Tenant's name, logo or similar identifying features to their original appearance.

**ARTICLE 6
DAMAGE OR DESTRUCTION**

If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, Landlord shall have the right, in its sole and absolute discretion, to determine whether to restore the Premises by repair or rebuilding. If Landlord elects to repair or rebuild, and is able to complete such restoration within 90 days from the date of damage, subject to the terms of this paragraph, this Lease shall remain in full force and effect. If Landlord is unable to restore the Premises within this time, or if Landlord elects not to restore, then either Landlord or Tenant may terminate this Lease by giving the other written notice. Rent shall be abated as of the date of damage. The abated amount shall be the current Rent prorated on a 30-day basis. If this Lease is not terminated, and the damage is not repaired, the Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's invitee, only Landlord shall have the right of termination, and no reduction in Rent shall be made.

**ARTICLE 7
ASSIGNMENT AND SUBLETTING**

7.1 No Tenant Subletting Without Landlord's Prior Written Consent. Tenant may not assign or sublet all or any portion of its interest in this Lease without Landlord's prior written consent, which may be withheld by Landlord in its sole and absolute discretion.

7.2 Assignment of Landlord's Interest in Lease or the Leased Premises. Landlord may convey, transfer, sell, assign or otherwise transfer the Property, this Lease, all or a portion of its interest thereunder, and/or all or a portion of the payments that are payable to it by Tenant pursuant to this Lease. Tenant hereby consents and agrees to any such transfer which Landlord considers necessary or proper, regardless of the reason or reasons for which Landlord makes such transfer and regardless of the entity that is the Transferee thereunder.

**ARTICLE 8
PERFORMANCE OF TENANT'S COVENANTS**

8.1 Right of Performance. If Tenant shall at any time fail to pay any tax, assessment, fee or other charge in accordance with this Lease, within the time period therein permitted or shall fail to pay for or maintain any of the insurance policies provided for in this Lease, within the time therein permitted, or fail to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Lease, then Landlord, after ten (10) days' written notice as to payments of Rent, and with ninety (90) days' written notice as to other breaches, given to Tenant (or, in case of an emergency, on such notice as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):

8.1.1 Pay such tax, assessment, fee or other charge payable by Tenant, or

8.1.2 Pay for and maintain such insurance policies provided for, or

8.1.3 Make such other payment or perform such other act on Tenant's part to be made or performed as in this Lease provided.

8.2 Reimbursement and Damages. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon, shall constitute an obligation payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. A failure by Tenant to make such a payment shall be a material breach of this Lease. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Premises, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

ARTICLE 9 HAZARDOUS MATERIALS

9.1 Landlord's Representations and Warranties. Except as identified by Landlord in writing to Tenant as known Hazardous Materials or adverse environmental conditions prior to the execution of this Lease, Landlord makes no representation or warranty regarding the condition of the Premises or Property. As used in this Lease the term "Hazardous Materials" shall mean (a) any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicity" (or words of similar import), (b) petroleum products (including crude oil or any fraction thereof) or any chemical substance or material which is prohibited, limited, or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources, and (c) mold.

9.2 No Use by Tenant of Hazardous Materials on the Premises. Tenant covenants and agrees that it shall not, and that it shall not permit any licensee to, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Premises except in connection with any construction, operation, maintenance, or repair of the Premises or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws. Tenant's violation of the foregoing prohibition shall constitute a material breach hereunder and Tenant shall indemnify, hold harmless and defend the Landlord for such violation as provided below.

9.3 Notice and Remediation by Tenant. Tenant shall, within five (5) days of such occurrence, or immediately in cases of imminent threat of injury to life or property, notify Landlord of any release of any Hazardous Materials, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials

which may affect the Property. Tenant's breach of the above shall be deemed a material default under the terms of this Lease giving rise to Landlord's right, in its sole discretion, to terminate this Lease.

9.4 Environmental Indemnity. Tenant hereby agrees to hold harmless, defend and indemnify Landlord and its officers, officials, employees, agents, representatives, and volunteers from and against all liability, loss, damage, costs, penalties, fines and/or expenses (including attorney's fees and court costs) arising out of or in any way connected with (a) Tenant's breach or violation of any covenant, prohibition, or warranty in this Lease concerning Hazardous Materials, or (b) the activities, acts or omissions of Tenant, its employees, contractors or agents on or affecting the Premises during the Term, including but not limited to the release of any Hazardous Materials or other kinds of contamination or pollutants of any kind into the air, soil, groundwater or surface water on, in, under or from the Premises whether such condition, liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered before or after the termination of this Lease. This indemnification supplements and in no way limits the scope of any other indemnification set forth in this Lease.

9.5 Release. Tenant waives, releases, acquits and forever discharges Landlord and its employees, members and officials or any other person acting on behalf of Landlord, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation (collectively "Claims") whatsoever including, but not limited to, all Claims at common law, whether direct or indirect, known or unknown, foreseen or unforeseen, which Tenant has as of the Effective Date on account of or in any way growing out of or in connection with any Hazardous Materials or other conditions on, in, under, from, or affecting the Premises, or any law or regulation applicable thereto. Tenant is hereby subrogated to any and all rights possessed by Landlord against third parties with respect to said Claims.

9.6 Termination. The agreements and obligations of Tenant under this Article 9 with regard to indemnification of Landlord shall survive the scheduled termination or sooner expiration of the Term for any reason, for five (5) years and all claims relating thereto must be delivered in writing to Tenant within such period.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Landlord's Representations and Warranties. Landlord represents and warrants to Tenant as follows: (a) Landlord is duly organized under the laws of the State or California and has full right and authority to enter into this Lease and to perform all of Landlord's obligations under this Lease; and (b) Tenant, upon performing and complying with all covenants, agreements, terms, and conditions of this Lease to be performed or complied with by it, shall peaceably and quietly have, hold and enjoy the full possession and use of the Premises throughout the Term.

10.2 Tenant's Representations and Warranties. Tenant represents and warrants to Landlord as follows: (a) Tenant has examined the Premises and finds that it is fit for use as office space in accordance with this Lease; (b) Tenant acknowledges that Landlord has not made any representations or warranties regarding the condition of the Premises, or its suitability for the

operation of office space contemplated by this Lease; (c) Tenant is duly organized under the laws of the State of California and has the right, power and authority to enter into this Lease and to perform all the obligations of Tenant hereunder.

ARTICLE 11 EVENTS OF DEFAULT; REMEDIES

11.1 Events of Default

11.1.1 Events of Default by Tenant. Any one or all of the following events after ninety (90) days written notice to Tenant from Landlord, unless a shorter period is specified below, shall constitute an Event of Default by Tenant hereunder:

(a) If Tenant shall default in the payment of any Monthly Rent or Additional Rent or other charges when and as the same becomes due and payable and such default shall continue for more than ten (10) days after Landlord shall have given written notice thereof to Tenant; or

(b) The abandonment or vacation of the Premises by Tenant; or

(c) The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "Assignee"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee, or of any substantial part of the Premises of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of sixty (60) days or more (whether or not consecutive); or the commencement by Tenant or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law, or consent by Tenant or any such Assignee to the entry of any order for relief in any voluntary or involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing; or

(d) If Tenant shall default in the performance of or compliance with any other material term, covenant or condition of this Lease and if Tenant shall fail to cure such default within ninety (90) days after receipt of written notice thereof from Landlord, or, if the default is of such character as to require more than ninety (90) days thereof to cure and Tenant shall fail to commence such cure within such ninety (90) day period and thereafter failure to use reasonable diligence to cure such default.

11.1.2 Events of Default by Landlord. If Landlord shall default in the performance of or compliance with any material term, covenant or condition of this Lease and if Landlord shall fail to cure such default within ninety (90) days after receipt of written notice

thereof from Landlord, or, if the default is of such character as to require more than ninety (90) days thereof to cure and Landlord shall fail to commence such cure within such ninety (90) day period and thereafter failure to use reasonable diligence to cure such default.

11.2 Remedies.

11.2.1 Remedies Available to Landlord.

(a) General. If an Event of Default of Tenant shall occur and such default not be cured within the time required as set forth above, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant and recover as an award in such suit the following: (a) the worth at the time of award of the unpaid Rent and all other sums due hereunder which had been earned at the time of termination; (b) (ii) the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid Rent and all other sums due hereunder for the balance of the Term after termination exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom; and (e) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

(b) Landlord's Right to Re-Enter. If an Event of Default of Tenant occurs, Landlord shall also have the right, with or without terminating this Lease, to reenter the Premises and remove all persons and property from the Premises; property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. The foregoing right shall be exercised in accordance with, and shall be subject to the provisions, of California law.

(c) Landlord's Right to Re-Let. If an Event of Default of Tenant occurs, Landlord shall also have the right, with or without terminating this Lease, to relet the Premises. If Landlord so elects to exercise its right to relet the Premises without terminating this Lease, then rentals received by Landlord from such reletting shall be applied as follows: First, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; Second, to the payment of any cost of such reletting; Third, to the payment of the cost of any alterations and repairs to the Premises; Fourth, to the payment of Rent due and unpaid hereunder; and Fifth, the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Should the amount of rental received from such reletting during any month which is applied to the payment of Rent hereunder be less than that agreed to be paid during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making alterations and repairs not covered by the rentals received from such reletting.