

**AVALON CITY COUNCIL MEETING WILL ALSO INCLUDE A MEETING OF THE
CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE
AVALON COMMUNITY IMPROVEMENT AGENCY AND
AVALON HOUSING AUTHORITY
TUESDAY, SEPTEMBER 6, 2016 – 6:00 P.M.
CITY COUNCIL CHAMBERS
410 AVALON CANYON ROAD, AVALON
A G E N D A**

In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact Denise Radde, City Clerk (310) 510-0220. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35.104 ADA Title II). All public records relating to an agenda item on this agenda are available for the public inspection at the time the records are distributed to all, or a majority of all, members of the City Council. Such records shall be available at City Hall located at 410 Avalon Canyon Rd.

CALL TO ORDER / PLEDGE OF ALLEGIANCE / INVOCATION / ROLL CALL

ANNOUNCEMENTS / WRITTEN COMMUNICATIONS

CITY MANAGER REPORT / CITY ATTORNEY REPORT

COUNCILMEMBER REPORTS / MAYOR REPORT

PRESENTATIONS

1. Proclamation: Constitution Week shall be celebrated September 17 through 23 and recognizes the two hundred twenty-ninth anniversary of the drafting of the Constitution of the United States of America.

2. Avalon Sheriff Station's B.E.A.R. (Bicycle Education And Registration) program information and presentation of Certificates of Completion to those local youth competing the five week course encompassing bicycle building skills, bicycle riding skills, life skills, and a positive relationship with local law enforcement. The B.E.A.R. program is taught by Deputy Ken Yanecko.

ORAL COMMUNICATION

Members of the public may address the City Council at this time. No action will be taken on non-agenda items at this meeting. Speakers should limit comments to three (3) minutes each.

CONSENT CALENDAR

All items listed on the Consent Calendar are considered to be routine by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a specific item is removed from the Consent Calendar for further discussion and possible action.

CITY COUNCIL AGENDA
SEPTEMBER 6, 2016
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1. Actions

Although the live recording is the official record of public meetings, actions are prepared for the Council's approval.

Recommended Action

Approve actions from the August 2, 2016 and August 16, 2016 regular City Council meetings.

2. Resolution approving the application for the annual allocation for transit funds under Article 8 of the Transportation Development Act

The City receives funds from the Los Angeles County Metropolitan Transportation Authority (LACMTA) under Article 8 of the Transportation Development Act to assist with unmet transit needs in our community. This year the budgeted amount, which is formula based from population, is \$150,107.00. The City uses these funds to pay for a portion of the Avalon Transit (Fixed-Route and Dial-a-Ride) contract.

Recommended Action

Adopt the Resolution approving the annual application for TDA Article 8 funds for the current Fiscal Year.

3. Waterside Permit Application: Temporary Underwater Sculptures installed in Casino Dive Park

At the April 19, 2016 City Council meeting, the Doug Aitken Workshop, in conjunction with the Museum of Contemporary Art (MOCA), Los Angeles requested and was granted authorization to temporarily place three underwater sculptures in Avalon Bay. Final approval for this project is required.

Recommended Action

Staff recommends that the City Council: (1) Issue a Waterside Permit to the Parley Foundation for the placement of three temporary underwater sculptures in the City's jurisdictional waters in the Casino Dive Park; (2) Approve an agreement with the Parley Foundation for the terms and conditions of the installation of the underwater sculptures and authorize the City Manager to execute the agreement; and (3) Approve the design of the installation of the underwater sculptures and authorize the City Manager or his designee to approve any future revisions to the design.

4. Lease Purchase Agreement for the Joe Machado Field Artificial Turf Project

At the June 28, 2016 City Council Meeting, the City Council awarded a contract to design and construct an artificial turf surface at Joe Machado Field. The total contract cost was \$1,275,000 plus a 15% contingency. Anheuser Busch donated \$500,000 to be applied toward the project and the City Council appropriated funds from the General Fund to be utilized for the remaining cost of the project. City Council directed Staff to investigate outside funding opportunities and financing.

Recommended Action

Authorize the City Manager to execute the lease purchase agreement subject to review and approval from the City Legal Counsel.

**CITY COUNCIL AGENDA
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*****The following item on the Consent Calendar is the City of Avalon City Council acting as Successor Agency and Avalon Housing Authority**

5. Extend Agreement with RSG for FY16-17 for Successor Agency and Housing Authority Consulting Services

Rosenow Spevacek Group, Inc. (RSG) has submitted a proposal to continue to provide Successor Agency and Housing Authority services for FY16-17 for an amount not to exceed \$37,500. RSG proposes to provide redevelopment dissolution services for the Successor Agency, which would include a "Last and Final ROPS" for the Successor Agency's Recognized Obligation Payment Schedule (ROPS); and to provide Housing Authority reporting and strategic planning.

Recommended Action

Authorize the City Manager to extend the professional service agreement with RSG to (1) provide redevelopment dissolution services and (2) provide Housing Authority annual reporting and strategic planning not to exceed \$37,500 per the attached proposal.

GENERAL BUSINESS

6. Extension of Lease For Catalina Island Yacht Club

On July 5, 2016 the City Council instructed the Interim City Manager to propose terms for a lease extension for the Catalina Island Yacht Club. The current lease on the subject property ends in 2020.

Recommended Action

(1) Hear staff report, (2) Decide if the City Council wishes to make changes in the proposed agreement as requested by the Yacht Club leadership; (3) Direct the City Manager to have a new lease agreement prepared with the Catalina Yacht Club and authorize the approval of same under the terms approved by the City Council.

7. Item of Discussion: Vacation Rentals and Transfers

Council Member Cassidy is asking that the City Council have an open discussion about the wisdom of placing a cap on the number of vacation rentals in town and whether the transfer of vacation rental rights to a new purchaser should be automatic with the sale.

Recommended Action

Review and discuss whether the City of Avalon should place a cap on the number of vacation rentals and whether transfer of vacation rental rights should occur with sale of the property to a new owner. This is an item of discussion only.

8. Discussion of Potential Growth Management Ordinance

City Council has broad authority to enact regulations that provide for the health, welfare, and safety of its residents. Under this authority, the City Council may consider adopting an ordinance that would enable the City Council to deny or condition the issuance of development permits where it determines that there are not sufficient water resources to serve the proposed new development or to protect the long-term public health and safety interests of existing City users of water.

**CITY COUNCIL AGENDA
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Recommended Action

Discuss potential options for a Growth Management Ordinance and provide direction to Staff.

CLOSED SESSION

1. LIABILITY CLAIM
Claimant: Ryan Ramming
Agency Claimed Against: City of Avalon

ADJOURN

NOTICE OF POSTING

I, Denise Radde, declare that the City Council Agenda for September 6, 2016 was posted Thursday, September 1, 2016, on the City's website www.cityofavalon.com, and at City Hall, 410 Avalon Canyon Road. Copies of agendas and staff reports are available at City Hall.

Denise A. Radde, City Clerk and Chief Administrative Officer

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016
ORIGINATING DEP: City Clerk
PREPARED BY: Denise Radde, City Clerk
SUBJECT: City Council Actions

AGENDA ITEM: 1

CITY MANAGER: 

RECOMMENDED ACTION(S): Approve actions from the August 2, 2016 and August 16, 2016 regular City Council meetings.

REPORT SUMMARY: Although the live recording is the official record of public meetings, actions are prepared for the Council's approval.

FISCAL IMPACTS: N/A

GOAL ALIGNMENT: Not aligned,

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: N/A

FOLLOW UP ACTION: File Actions in the City Clerk's office.

ADVERTISING, NOTICE AND PUBLIC CONTACT: This item was properly listed on the posted agenda pursuant to the Brown Act.

ATTACHMENTS: Actions

**CITY OF AVALON CITY COUNCIL AND
AVALON MUNICIPAL HOSPITAL BOARD OF TRUSTEES
TUESDAY, AUGUST 2, 2016
ACTIONS**

CITY COUNCIL CALL TO ORDER 6:00 p.m.

ROLL CALL - Mayor Anni Marshall, Mayor Pro Tem Oley Olsen, Councilmembers Cinde Cassidy, Richard Hernandez, and Joe Sampson. Also present City Manager David Jinkens, Chief Administrative Officer/City Clerk Denise Radde and City Attorney Scott Campbell.

CONSENT CALENDAR

There were two items on the Consent Calendar. Motion to approve Items 1 and 2 by Cinde Cassidy, seconded by Oley Olsen. (All Ayes)

1. Actions
Approved actions from the July 5, 2016 and July 19, 2016 regular City Council meetings and the July 14, 2016 Special City Council meeting.
2. Approve the Audit Committee Policy
Approved the Audit Committee Policy which defines the duties of the Audit Committee Members.

GENERAL BUSINESS

3. Parking Reconfiguration - Metropole Avenue
Councilmember Cassidy clarified that this plan was only for Metropole. Staff was directed to make sure that taxi and handicap parking spots were addressed also. Authorized the City Manager to approve and allow Hamilton Pacific, LLC, to paint and reconfigure the parking stalls on each side of Metropole. Motion by Oley Olsen, seconded by Cinde Cassidy. (All Ayes)
4. Potential Plastic Bag/Styrofoam Ban
City Attorney Scott Campbell gave a summary of the item and where things stood at the State and Federal level. Comments were received from the audience in favor of the ban. After discussion, Council Cassidy stated she would like Council to give direction to Staff to move forward with a plan on how to sunset the program and investigate what products are involved to initiate both the plastic bag and styrofoam ban. Additionally, Councilmember Cassidy specified that the City should just move forward regardless of what happens on the state or federal level. Motion by Oley Olsen to give direction to eliminate single use plastic bags from the grocery and retail stores and styrofoam and plastic utensils from food to go establishments, seconded by Anni Marshall. (All Ayes)
5. Shore Boat Service – This item was removed from the agenda.

*******Next item on the agenda was the City Council acting as the Avalon Municipal Hospital Board of Trustees.**

CITY COUNCIL ACTIONS
AUGUST 2, 2016
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6. Appointment of Two Directors to the Avalon Medical Development Corporation Board
Appointed Dr. Erik Barton and Carol Reynolds to the Board of Directors of the Avalon Medical Development Corporation (AMDC) with terms ending June 30, 2017. Motion by Anni Marshall, seconded by Richard Hernandez. (All Ayes)

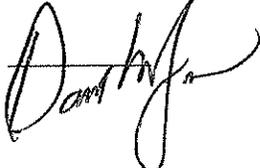
ADJOURN

Mayor Marshall adjourned the City Council meeting at 7:30 p.m.

I, Denise Radde, City Clerk of the City of Avalon, do hereby certify that the DVD videotape of the City Council Meeting on August 2, 2016, is the official record of that Council Meeting and is on file and maintained in City Hall.

Denise A. Radde, City Clerk / Interim City Manager

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016 **AGENDA ITEM:** 2
ORIGINATING DEP: Administration **CITY MANAGER:** 
PREPARED BY: Audra McDonald, Administrative Analyst
SUBJECT: Resolution approving the application for the annual allocation for transit funds under Article 8 of the Transportation Development Act.

RECOMMENDED ACTION(S): Adopt the Resolution approving the annual application for TDA Article 8 funds for the current Fiscal Year.

REPORT SUMMARY: The City of Avalon receives funds from the Los Angeles County Metropolitan Transportation Authority (LACMTA) under Article 8 of the Transportation Development Act to assist with unmet transit needs in our community. The funds, which are a combination of State gas and sales tax, are only available to cities that do not have LACMTA bus service (Avalon, Lancaster, Palmdale and Santa Clarita). This year the budgeted amount, which is formula based from population, is \$150,107.00. The City uses these funds to pay for a portion of the Avalon Transit (Fixed-Route and Dial-a-Ride) contract.

TDA Article 8 Funds are highly restrictive and require an annual Public Hearing which is facilitated by LACMTA staff and typically held at a City Council Meeting in March or April.

GOAL ALIGNMENT: Goal Six – Transportation.

FISCAL IMPACTS: Continues funding for the local transportation program and is indicated as a source of revenue in the FY 2016-17 Budget, Local Transportation Account 122 25-8060.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The City would not be eligible to claim the \$150,107.00 in TDA Article 8 funds.

FOLLOW UP ACTION: Forward the Resolution and the claim form to LACMTA for approval and reimbursement.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS:

1. Resolution
2. LACMTA Transit Fund Allocations Fiscal Year 2017 Revenue Estimates

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA,
APPROVING THE APPLICATION FOR TRANSIT FUNDS AUTHORIZED UNDER
ARTICLE 8 OF THE TRANSPORTATION DEVELOPMENT ACT.

WHEREAS, Article 8 of the Transportation Development Act provides that cities can use eligible funds of the County's Local Transportation Funds for transit expenditures.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF AVALON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. To authorize Audra McDonald or Robert Mescher as the City's authorized signature and designated contact person.

Section 2. To apply for all funds available to the City of Avalon allocated for transit improvements.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Avalon on this 6th day of September, 2016, by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Ann H. Marshall, Mayor

ATTEST:

Denise A. Radde, City Clerk

**Los Angeles County Metropolitan Transportation Authority
 FY 2017 TDA ARTICLE 8 APPORTIONMENTS
 (Transit/Streets & Highways)**

AGENCY	POPULATION [1]	ARTICLE 8 PERCENTAGE	ALLOCATION OF TDA ARTICLE 8 REVENUE
Avalon	3,840	0.60%	\$ 150,107
Lancaster	160,784	24.95%	6,285,096
Palmdale	157,009	24.37%	6,137,530
Santa Clarita	213,231	33.09%	8,335,265
LA County [2]	<u>109,504</u>	<u>16.99%</u>	<u>4,280,545</u>
Unincorporated			
Total	644,368	100.00%	\$ 25,188,543
		Estimated Revenues:	\$ 25,188,543

[1] Population estimates are based on State of California Department of Finance census 2014 data-report
 [2] The Unincorporated Population figure is based on 2007 estimates by Urban Research minus annexation figures from Santa Clarita increased population of 26,518 (2012 annexation)



CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016
AGENDA ITEM: 3
ORIGINATING DEP: Harbor
CITY MANAGER: 
PREPARED BY: Brian Bray, Harbor Master
SUBJECT: Waterside Permit Application: Temporary Underwater Sculptures installed in Casino Dive Park

RECOMMENDED ACTION(S): Staff recommends that the City Council:

- (1) Issue a Waterside Permit to the Parley Foundation for the placement of three temporary underwater sculptures in the City's jurisdictional waters in the Casino Dive Park;
- (2) Approve an agreement with the Parley Foundation for the terms and conditions of the installation of the underwater sculptures and authorize the City Manager to execute the agreement; and
- (3) Approve the design of the installation of the underwater sculptures and authorize the City Manager or his designee to approve any future revisions to the design.

REPORT SUMMARY: At the April 19, 2016 City Council meeting, the Doug Aitken Workshop, in conjunction with the Museum of Contemporary Art (MOCA), Los Angeles requested and was granted authorization to temporarily place three underwater sculptures in Avalon Bay. This underwater art display will coincide with a major survey of Doug Aitken's work which will open at MOCA in September 2016. The underwater sculptures will be installed for a period of three months and would be free and open to the public. These sculptures, which are geometric in design, will be moored to the Casino Dive Park floor and floating under the surface at varying depths in order to make this artistic experience accessible to divers/swimmers of all skill levels.

The underwater exhibit will be located within the City's Dive Park, outside of the Marine Protected Area at Casino Point. The sculptures will be moored/anchored within the City's Dive Park at a depth of approximately 70 feet. The mooring system for the sculptures is designed to withstand currents and swells well in excess of the maximums experienced in the Dive Park. The sculptures will only be accessible by swimming to the exhibit from Casino Point.

Being located within the California Coastal Zone and in offshore waters, the installation of the underwater sculptures will require the issuance of a Coastal Development Permit from the California Coastal Commission, unless the Commission approves a waiver.

Staff recommends issuing the Waterside Permit once the City receives a Coastal Development Permit issued to the applicant from the California Coastal Commission, or once the City receives official notice from the California Coastal Commission that it has waived the Coastal Development Permit Requirement, and the following conditions are met:

- The sculptures shall be located within the City's Dive Park, but outside the Marine Protected Area at Casino Point.
- The mooring/anchoring system for the sculptures shall be designed to prevent the sculptures from drifting into the Marine Protected Area or the vessel travel lanes adjacent to the Dive Park.
- The installation of the exhibit shall be completed in September, 2016, and the removal of the exhibit shall be completed by December 31, 2016, thereby allowing the sculptures to be in place for a period of no more than three months.
- Upon the removal of the exhibit, the bay floor shall be returned/restored to its previously existing condition.
- The applicants shall provide the City with a copy of liability insurance (combined single limit for bodily injury and/or property damage) in the amount to be determined by the City Attorney and PARSAC listing the City as additional insured, and shall maintain said insurance for the duration of the underwater exhibit.
- The applicants shall agree to indemnify, defend (with counsel acceptable to City) and hold harmless the City, its officers and its employees from all liability and damages and from all costs of suit, including attorneys' fees, arising from the installation of the underwater sculptures in the Casino Dive Park.
- The applicants shall post and maintain for the duration of the underwater exhibit a security bond in an amount to be determined by the City Attorney and PARSAC. (The bond will be required in the amount of \$20,000, based on an estimate of the potential removal cost.)
- The applicants shall execute a contract in a form acceptable to the City Council and approved by the City Attorney containing the terms and conditions for installation of the sculptures.

City staff and the City Attorney's office has worked with the applicant to prepare a contract for the terms and conditions of the installation. Among other terms, the contract limits the City's liability, requires defense and indemnification from the applicant for any claims related the sculptures, requires the applicant to maintain insurance, and requires the applicant to prepare emergency plans. The term of the contract will be for three months, at which point the sculptures will be removed by the applicant, at no cost to the City. The mooring blocks used in the installation will remain in place and be donated to the City. The mooring blocks supporting the buoys marking the perimeter of the Dive Park are due for replacement, and use of these blocks will save the City approximately \$700 per unit. A copy of the agreement is attached for the City Council's review and approval.

As part of the contract and the permit, Staff requested that the applicant submit the design plan for the installation of the sculptures. The "Underwater Pavilions Installation and Removal Plan", containing the project design, is attached hereto for the City Council's review. Staff has

reviewed this plan and recommends that the City Council take a separate action specifically approving the design.

GOAL ALIGNMENT: Enhance Recreation Opportunities; Natural Resources

FISCAL IMPACTS: There are no costs to the City associated with authorizing the placement of the underwater sculptures in the Casino Dive Park. Additional revenue will likely be generated by the increased tourism resulting from the installation of the underwater sculptures.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The temporary underwater sculptures would not be installed in the Casino Dive Park.

FOLLOW UP ACTION: Execute the agreement with exhibit applicants and subsequently monitor their compliance with agreement provisions.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS:

1. Waterside Permit Application
2. Contract for Installation of Temporary Underwater Pavilions
3. Temporary Underwater Pavilions Installation and Removal Plan

CITY OF AVALON

WATERSIDE PERMIT APPLICATION

An application fee of \$217.00 is due at the time the application is submitted to the Harbor Department. Applications should be sent to the Avalon Harbor Department, P.O. Box 1085, Avalon, CA 90704, or delivered to the Harbor Master's office, #22 Pleasure Pier, Avalon, CA.

Deadline for new applications is December 15th of each year.

Please complete this application in full detail. Questions that require further details should be answered on an attached sheet.

1. Name of Applicant: Parley Foundation
2. Address: 187 Lafayette St City New York Zip 10013
3. Phone (Home) 201-482-1020 (Avalon business) 510-530-9388
4. Name of Business/Project: Pavilions underwater exhibit
5. Location of Avalon Base of Operations: Avalon Dive Park
6. Please attach a detailed Project/Business description to this application and label the attachment as Exhibit A.
7. On the map provided, sketch the project/business activities, showing the proposed locations of all waterborne traffic and activity.
8. Duration:
Hours of Operation _____
Days of Operation _____
Months of Operation Sept - Dec 2016
9. Does this activity include overnight accommodations on boat or shore ?
10. Describe the number, length, and types of watercraft which will be added to the City waters? N/A
Number _____ Trips per day _____ Type _____
Schedule _____
11. For scheduled services, including shore boats, where will queuing be and for what duration? N/A

12. How will people be transported to the facility? people can swim to it
How often? during dive park hours of operation
Number of passengers per trip? N/A

13. What berthing/mooring will be required? Mooring (Temporary)

14. If the proposed business/activity requires a new structure or modification to harbor facilities or the harbor itself, including the moles and pier, attach the proposed plans. N/A

15. How many new employees would be Avalon-based? Using existing Avalon business

16. Communications:

VHF Channels: N/A Phone: _____

If answering machine, hours of operation: _____

17. If a sign will be required, list the size and submit a drawing. Please note that a Sign Permit Application must be obtained from and submitted to the Planning Department for approval. N/A

18. Please attach all permits and certifications required to legally perform the activity being applied for in this application.

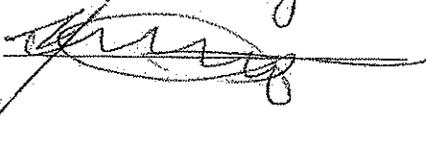
Coastal Commission Waiver applied for
ACOE permit/waiver - applied for
Contract with City of Avalon - pending
Install plan attached to this document

Applicant Acknowledgement

Applicant agrees that if this Waterside Permit is granted, he/she will conduct his/her business in accordance with all federal, state, and local laws, including the City's planning and zoning laws. Applicant also agrees to abide by the terms of this Permit and all rules, regulations, and/or restrictions placed upon it by the City Council. Applicant must follow all regulations regarding the use of City facilities. This Permit may be revoked, suspended, or further conditioned at any time by the City Council for violations of the foregoing, or immediately in the City Manager's discretion if the public's health, safety, or well-being is threatened by the actions or inactions of the Applicant. Failure to pay use fees shall also be a violation of the terms of this Permit. Any decision made by the City Council regarding this Permit is final and conclusive. Decisions of the City Manager may be appealed to the City Council if the City is notified within 10 days of the City Manager's decision, but the City's Manager's decision shall remain in effect until the next regular meeting of the City Council at which an appeal may be heard.

Applicant Name: Liz Taylor Email Address: Liz@doermarine.com

Business/Activity Name: Parley - Underwater Pavilion

Applicant Signature:  Date: 25 August 2016

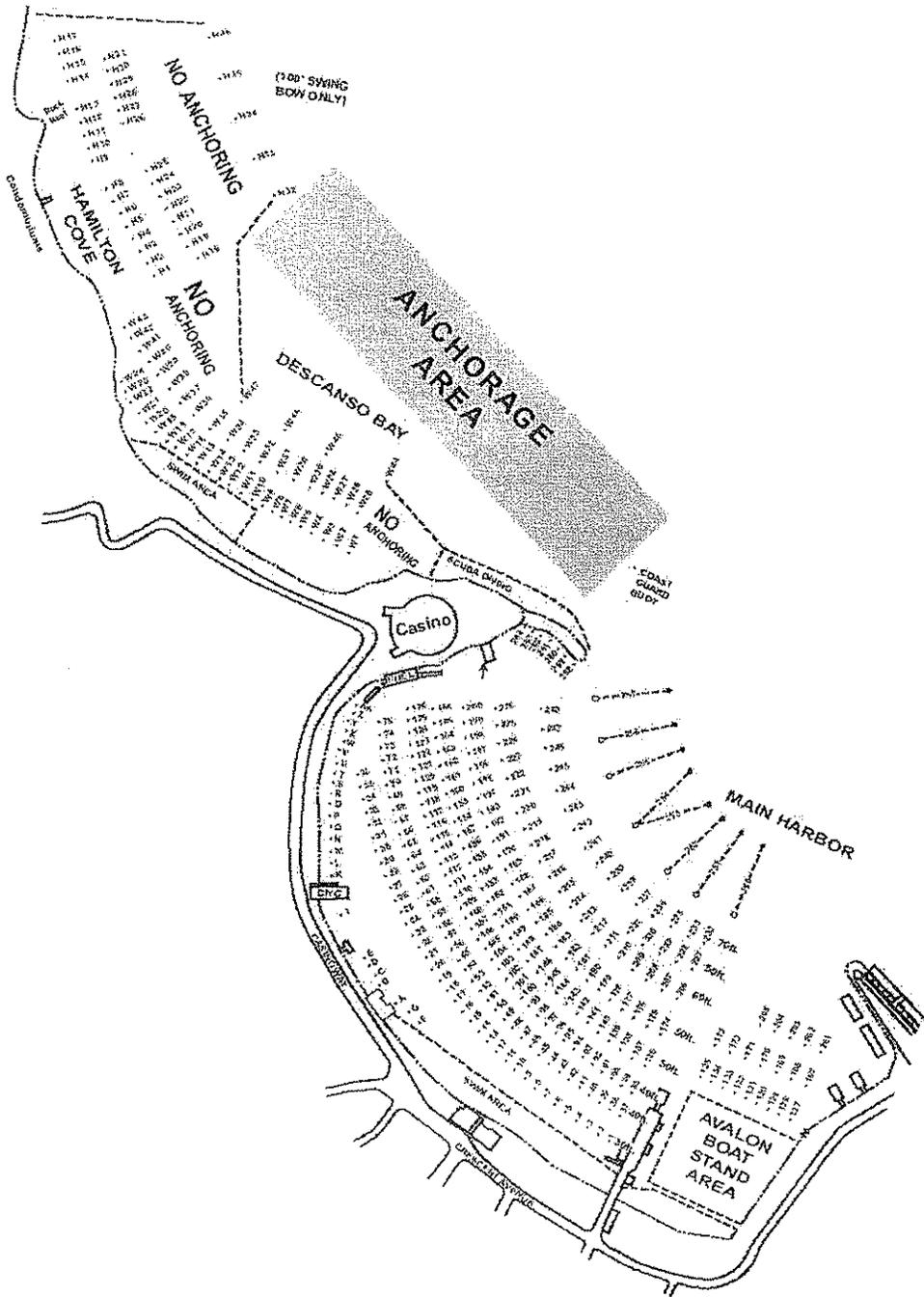
Application Presented at the City Council Meeting on: _____

Application Approved: _____

Application Denied: _____

Application Approved with Attached Conditions: _____

_____ City Manager _____ Date



**AN AGREEMENT TO ALLOW FOR THE PLACEMENT OF THREE TEMPORARY
MOORING INSTALLATIONS IN THE CITY'S JURISDICTIONAL WATERS OF
AVALON BAY**

1. Parties and Date.

This Agreement (the "Agreement") is made and entered into this _____ day of September, 2016, by and between the City of Avalon, a municipal corporation organized under the laws of the State of California with its principal place of business at 410 Avalon Canyon Road, Avalon, California 90704 ("City") and Parley LLC, a Delaware Limited Liability Company with its principal place of business at 187 Lafayette Street, 5th Floor, New York, New York 10013 ("Parley"). City and Parley are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. Recitals

2.1 Parley, in conjunction with the artist Doug Aitken (the "Artist"), has created Underwater Pavilions Project (the "Project"), as a temporary mooring installation (the "Installation") in Avalon Bay, within the jurisdictional waters of the City. The Project will coincide with a major survey of Artist's work, which will open at the Museum of Contemporary Art, Los Angeles in September 2016.

2.2 The Installation will be installed in September 2016 for a period of three months.

2.3 The Installation will consist of three pavilion structures—approximately 11' by 13' geometric design with mirrored surfaces to reflect the underwater landscape and create a kaleidoscopic effect. The temporary moorings will be placed within the dive park to anchor the three pavilion structures and other elements necessary to secure the Installation, including video devices, cabling, and equipment to provide for the live feed and lighting. The Installation will be placed within the City's Dive Park, outside of the Marine Protected Area at Casino Point.

2.4 Except as varied by this Agreement, the Installation shall be in substantially the same format as proposed by Parley in the document attached hereto as Exhibit A, which shall be incorporated herein by this reference.

2.5 City intends to allow the Installation, conditional upon approval and issuance of a waterside permit and subject to the terms and conditions stated herein.

3. Terms and Conditions

3.1 City's Authorization

3.1.1 Revocable License. City authorizes the Installation within the City's jurisdictional waters, subject to the terms and conditions stated herein. Parley shall not install anything in City's jurisdictional waters except as expressly authorized herein. The Installation shall not be modified without City's express written consent. As a condition precedent to any rights under this license, Parley shall first obtain a waterside permit in accordance with the

Avalon Municipal Code and shall comply with all terms and conditions of the waterside permit. Nothing herein shall be construed as a right to approval of a waterside permit.

3.1.2 Consideration. The parties agree and acknowledge that each party has received good and valuable consideration. Neither party shall owe compensation to the other party, except as set forth herein. City shall not pay or reimburse any expenses incurred by Parley in relation to this Agreement.

3.2 Coastal Commission Approval

3.2.1 Coastal Development Permit. As a condition precedent to City's authorization of the Installation, Parley shall first obtain either a Coastal Development Permit ("CDP") from the California Coastal Commission ("CCC") or a waiver from the CCC indicating that a CDP is not required.

3.2.2 Plans. Parley's application for a CDP shall contain detailed and accurate plans for the design and installation, including engineering and design plans for securing the Installation in place. Parley's application for a waiver shall contain complete and accurate information.

3.2.3 Compliance. If a CDP is required, the Installation must be consistent with the CDP and any plans submitted with the CDP application. Parley shall comply with all terms and conditions of the CDP and any other requirements of the CCC. If a waiver is granted, the Installation shall be consistent with all material information provided in support of the waiver application, and Parley shall not perform any acts that are inconsistent with the waiver or that would otherwise require a CDP.

3.3 Location.

3.3.1 Designated Area. The Installation shall be contained entirely within the Dive Park, in an area designated by the City as shown on Exhibit B, attached hereto and incorporated herein by this reference (the "Designated Area"). The City reserves the right in its sole discretion to modify Exhibit B. No part of the Installation may be installed or be able to drift outside of the Designated Area.

3.4 Engineering, Design, and Installing

3.4.1 Standard of Care. Parley shall perform this Agreement and shall design and install the Installation in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Parley represents and maintains that all persons involved in the design, installation, or performance of this Agreement are skilled in the professional calling necessary to perform the work assigned. Parley warrants that all employees and subconsultants shall have sufficient skill and experience to perform the work assigned to them. Parley represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work and that such licenses and approvals shall be maintained throughout the term of this Agreement.

3.4.2 Preparation of Plans. Parley shall prepare plans for the Installation showing the design and engineering of the Installation, including the design and engineering of all moorings and other facilities securing the Installation. Plans shall be reviewed by a naval architect or engineer experienced in marine related design and fabrication. Plans shall be submitted to the City prior to the start of any installation.

3.4.3 Minimum Standards. The Installation must be engineered to remain secure and to withstand all currents, swells, and surges up to the maximum level that may occur as can be reasonably predicted at the time of installation. The Installation shall be designed and engineered so that the various components of the Installation do not collide with each other.

3.4.4 Drifting. The mooring/anchoring system for the installation shall be designed so as to prevent the Installation from drifting outside of the Designated Area and shall prevent drifting into the Marine Protected Area or any vessel travel lanes. Parley shall be solely responsible for ensuring that the Installation does not drift into the Marine Protected Area or any vessel travel lanes. Parley shall make its inquiry of the proper and safe location and shall not be entitled to rely on Exhibit B or any document provided by the City for determining the location of the Marine Protected Area or any vessel travel lanes.

3.4.5 Hazards. The Installation shall be designed so as to be free of hazardous conditions for experienced divers. There shall be no sharp-to-the-touch points or edges. Moorings shall be visible and shall be designed so as not to entangle divers. Rooms within the sculpture shall be designed to remain open so that divers may enter and exit without risk of entrapment. Materials used shall not cause pollution or other harmful conditions.

3.4.6 Installing. Parley shall be responsible for installing the Installation.

3.4.7 Warranties. Parley represents and warrants that the design and installation of the Installation shall be in accordance with the terms of this agreement and with the applicable standard of care.

3.5 Duration and Removal

3.5.1 Three-Month Period. The Installation shall remain in place for a period of 3 months, commencing on September ____, 2016, and completed on December ____, 2016. In no event shall the Installation remain in place after December 31, 2016. This section may only be modified with City's express written consent. At the end of the three-month period, Parley shall completely remove the Installation. Parley shall remove the Installation within 7 calendar days, unless removal within this time is not reasonably safe due to conditions outside of Parley's control, in which case removal shall be completed as soon as it is reasonably safe to do so. It shall not be necessary for City to request or demand removal. The 7-day removal period may be modified by City in accordance with its right to require early removal. Parley may remove the Installation prior to the expiration of the three-month period, but it shall leave the mooring blocks in place.

3.5.2 Early Removal Order. The City may order that Parley completely remove the Installation at any time in accordance with this section. Upon an early removal order, Parley shall completely remove the Installation within the earlier of 7 calendar days or such other time

as is necessary to prevent damage to persons or property. The City may determine the time necessary to prevent damage to persons or property in its sole discretion. The grounds for early removal shall be: (i) Parley materially breaches this Agreement; (ii) Parley fails to maintain the Installation in a continuously secure state, (iii) the Installation drifts beyond the Designated Area or into the Marine Protected Area or any vessel travel lanes; (iv) the Installation is determined to be a risk to any person or property or causes injury to a person or property; (v) the Installation was installed without being in compliance with the CDP or the engineering plans; (vi) the engineering plans are determined to not meet the standard of care; (vii) the Installation is subject to litigation or determined to be unlawful or is ordered removed by a court or administrative tribunal; (viii) the Installation results or is reasonably believed to result in a detrimental effect to the ocean, the ocean floor, marine life or plants, or the environment; (ix) Parley materially misrepresents any representations contained in this Agreement or otherwise made to the City, (x) existing or expected weather conditions require that removal is necessary to prevent injury to persons or property; or (xi) the Installation is determined by the City in its sole discretion to be detrimental to the public interest. In the event that removal cannot be accomplished within the time set forth in this section because removal is not reasonably safe due to conditions outside of Parley's control, then removal shall be completed as soon as it is reasonably safe to do so.

3.5.3 Removal of Unsecured Components. In the event that any component of the Installation becomes unsecured, Parley shall take all necessary steps to ensure that the unsecured component does not result in injury to person or property. The unsecured component may be re-secured as necessary for safety but must then be immediately removed at the earliest time for safe removal.

3.5.4 Costs of Removal and Damages. Parley shall bear all costs of removal. In the event that Parley does not timely remove the Installation, or any component thereof, City may immediately proceed with removal and charge the costs to Parley. Costs shall be based on City's actual costs, with a 10% surcharge for City's administration. Nothing herein shall prevent City from recovering from Parley any actual or consequential damages that City incurs as a result of Parley's failure to timely remove the Installation or any component thereof. Parley hereby waives any claim against City for damage or destruction incurred during removal as a result of Parley's failure to timely remove the Installation.

3.5.5 Restoration of Existing Conditions. Upon removal, Parley shall return and restore the bay floor and all other areas affected by the Installation to their prior existing condition. Parley shall remove all components of the Installation, except for the mooring blocks, and shall not leave behind any trash or debris. Upon notice of removal by Parley, the City shall inspect the site within three (3) business days and will report any concerns regarding the condition of the site; however, City's inspection or failure to inspect shall not waive any of City's rights or Parley's obligations under this Agreement. If City performs any restoration work, Parley shall be responsible for the costs of such work.

3.5.6 Performance Deposit. Prior to installing any portion of the Installation, Parley shall deposit the amount of Twenty Thousand Dollars (\$20,000) (the "Deposit") to the City's escrow account as a guarantee of the performance of all obligations of Parley herein, including but not limited to timely removal of the Installation and restoration of the existing conditions. Parley shall obtain routing information for the City's escrow account from the City

Manager or his designee. If Parley shall fully observe and perform all of the terms of this Agreement, the Deposit shall be returned to Parley at the end of the Agreement.

3.5.7 Mooring Blocks. At the end of the exhibition, the mooring blocks shall be donated to the City for City's use. Once installed, and notwithstanding anything else in this Agreement to the contrary, the mooring blocks shall not be removed and shall remain in place. Upon termination or expiration of this Agreement or upon the removal of the other components of the Installation, ownership of the mooring blocks shall automatically transfer to the City, and the mooring blocks shall be immediately available for City's use.

3.6 Operations

3.6.1 Maintenance. Parley shall maintain the Installation and keep the Installation in a continuously safe and clean state. Parley shall be responsible for ensuring that the moorings and all other safety and security elements are in proper functioning condition. City, in its discretion and in consultation with Parley, may perform day-to-day maintenance and cleaning as needed. City may, but is not obligated to, remove or alter the Installation as needed to remove any hazardous or dangerous condition.

3.6.2 Safety. In its performance of this Agreement, Parley shall act so as to avoid injury or damage to any person or property. In carrying out the Agreement, Parley shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees and the public appropriate to the nature and the conditions under which this Agreement is to be performed.

3.6.3 Emergency Planning. Prior to installing the Installation, Parley shall develop a contingency plan for any emergencies that may arise as a result of the Installation, including but not limited to a plan to recover any component of the Installation that may become unsecured and a plan to completely remove the Installation in a quick and efficient manner in the event of an imminent weather event or other potential risk. Parley shall communicate any emergency plans to City. Parley shall provide City with emergency contact information where Parley's emergency representative Ian Griffith, or his designee may be reached 24 hours a day in the event of an emergency. In the event Parley's representative expects to be unavailable, he or she shall provide City with an alternative emergency contact.

3.6.4 Parley's Representatives. Parley hereby designates Cyrill Gutsch, or his or her designee, to act as its representative for the performance of this Agreement. Parley's representative shall have full authority to represent and act on behalf of the Parley for all purposes under this Agreement. Parley agrees to work closely with City staff in the performance of this Agreement and shall be available to City's staff at all reasonable times.

3.7 Rights in the Installation

3.7.1 Parley's Ownership. Parley shall continue to own the Installation. City shall not obtain any ownership interest in the Installation.

3.7.2 Representation and Warranty. Parley represents and warrants that the Installation is the original work of the Artist and that the Artist owns all intellectual property

rights therein. Parley further represents and warrants that Parley has obtained from Artist all rights, licenses, or other authorizations necessary for Parley to convey the rights that are conveyed to City under this Agreement.

3.7.3 Copyright. The Artist shall retain all rights under Copyright Act of 1976 for original works produced under this Agreement except as otherwise provided in this Agreement. City and its assigns are not responsible for any third party infringement of Artist's copyright and for protecting the intellectual property rights of Artist. Any registration of a copyright under the State's Register of Copyrights shall be the sole responsibility of the Artist, and the costs of such registration shall be borne by the Artist.

3.7.4 Promotion. Parley, with due and lawful consent of the Artist, grants to City and its assigns an irrevocable license and right to document the Installation, distribute and authorize the making, display, and distribution of such documentation (e.g. photographs, drawings, etc.) for noncommercial purposes, including but not limited to advertising, brochures, media publicity, educational and promotional materials, postcards, booklets, catalogues and other similar publications. Any material created pursuant to this Article 3.7.4, including but not limited to photographs needs to be approved by the Artist before its publication or use by or for the City, which approval shall not be unreasonably withheld. This Section shall not in any way be construed as a license to City to make actual replications or reproductions of the Installation or to install those replications or reproductions. Parley is not required to give credit to City in any public showing under Parley's control or in documentation of the Installation. All uses of documentation by City are required to contain a copyright notice "© 2016 Doug Aitken" and credit to Doug Aitken.

3.7.5 Waiver. Parley, on behalf of and with the express consent of Artist, waives any and all claims arising against the City, its elected and appointed officials, employees and assigns, and its agents, officers and employees, arising under the Federal Visual Artist Rights Act, the California Art Preservation Act, and any other local, State, Federal or international laws that convey rights of the same nature as those conveyed under the California Civil Code or any other type of moral right protecting the integrity of works of art. City has no obligation to pursue claims against third parties to remedy or prevent alteration of the work.

3.7.6 Indemnification. Parley shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity related to the Installation.

3.8 Insurance

3.8.1 Time for Compliance. Parley shall not commence installing the Installation under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Parley shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this

Agreement for cause. (As used in this Agreement, the term "subconsultant" shall refer to any person or entity hired by Parley to perform installation and removal of the Installation.)

3.8.2 Minimum Requirements. Parley shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Parley, its agents, representatives, employees or subconsultants. Parley shall also require all of its subconsultants to procure and maintain the same level of insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

3.8.2.1 Marine General Liability. Parley shall maintain limits no less than \$1,000,000.00 per occurrence. In addition to \$1,000,000.00 marine general liability policy, Parley shall maintain a \$5,000,000.00 umbrella coverage.

3.8.2.2 Worker's Compensation and Employer's Liability. The minimum scope and amount of Worker's Compensation coverage shall be as required by the State of California and Employer's Liability Insurance. Employer's Liability shall have limits of \$1,000,000 per accident for bodily injury or disease.

3.8.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Parley shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.8.3.1 Marine General Liability. The marine general liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Parley, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Parley's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Parley's insurance and shall not be called upon to contribute with it in any way.

3.8.3.2 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Parley.

3.8.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance

shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.8.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Parley shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Parley shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.8.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.8.7 Verification of Coverage. Parley shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.8.8 Reporting of Claims. Parley shall report to the City, in addition to Parley's insurer, any and all insurance claims submitted by Parley in connection with the Services under this Agreement.

3.9 Indemnification

3.9.1 Scope of Indemnity. To the fullest extent permitted by law, Parley shall defend, indemnify and hold harmless the City, and its directors, officials, officers, employees, volunteers and agents, from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation, arising out of, incident to, or related to the Installation or this Agreement, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City.

3.9.2 Additional Indemnity Obligations. Parley shall defend, with counsel of City's choosing and at Parley's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Parley's duty to indemnify City that may be brought or instituted against City or its directors, officials, officers, employees, volunteers or agents. Parley shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers or agents as part of any such claim, suit, action or other proceeding. Parley shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Parley shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs

incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Parley's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.9.3 Legal Challenges. Parley agrees to defend, indemnify, and hold the City harmless, with counsel of City's choosing, from costs and expenses, including attorney fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any State or Federal court, or any administrative tribunal, challenging the City's actions with respect to this Agreement, the Installation, or any authorization, approval or other procedure related to this Agreement or the Installation, including but not limited to actions related to environmental review pursuant to CEQA. Parley understands and acknowledges that the City is under no obligation to defend any legal actions.

3.9.4 Waiver of Damages. It is acknowledged by the parties that City is entering into this Agreement to provide a location for Parley's Installation. Parley understands and agrees that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, Parley understands and agrees that City shall not be liable for damages to Parley or any successor for breach of this Agreement or for any cause of action that arises from this Agreement. Parley's remedies shall be limited removal of the Installation.

3.10 Miscellaneous

3.10.1 No Employment Relationship. Parley is not an employee, agent or representative of the City. Parley shall maintain complete control over its employees and its subcontractors/subconsultants and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. Parley shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

3.10.2 Labor Laws. Parley shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the Installation, including all Cal/OSHA requirements, and shall give all notices required by law. Parley shall be liable for all violations of such laws and regulations. By its signature hereunder, Parley certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the work.

3.10.3 Business License. Parley, and all subconsultants shall obtain a City of Avalon business license.

3.10.4 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County.

3.10.5 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.10.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.10.7 Construction; References; Captions. Because the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Parley include all personnel, employees, agents, and subconsultants of Parley, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.10.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.10.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.10.10 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.10.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.10.12 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.10.13 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.10.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.10.15 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

[SIGNATURES ON FOLLOWING PAGE]

<p>PARLEY, LLC</p> <p>By: _____</p> <p>Name and Title:</p> <p>_____</p> <p><i>Attest:</i></p> <p>By: _____</p> <p>Its: Secretary</p>	<p>CITY OF AVALON</p> <p>By: _____</p> <p>Name and Title:</p> <p>_____</p> <p><i>Attest:</i> _____</p> <p>City Clerk</p> <p><i>Approved as to form:</i></p> <p>Best Best & Krieger LLP</p> <p>_____</p> <p>City Attorney</p>
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EXHIBIT A

**Installation and Removal Plan with Identification of Designated
Area**

PROJECT #16025

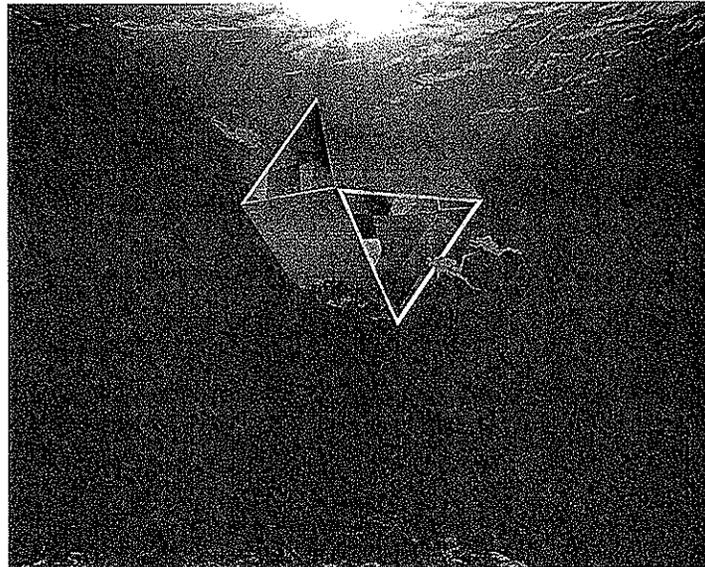


Underwater Pavilions

Installation and Removal Plan

Created by DOER Marine on behalf of the Parley Foundation

8/1/2016



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Project Description

The Underwater Pavilions Project is an anticipated 3-month temporary mooring installation planned to begin in September 2016 in the City of Avalon Dive Park off the coast of Santa Catalina Island, California. The scope of work has been streamlined to conform to existing City of Avalon mooring protocols (attached) and no longer includes a floating platform. The project requires the addition of seven 2500-lb moorings to ensure safety and stability. The temporary moorings will be placed within the dive park to anchor the three pavilion structures. When the Pavilions are removed, the mooring blocks will be repurposed to the dive park for use at the end of service. With one central mooring block to the three pavilions, and two more per pavilion, the pavilions have been engineered for the duration of the installation. See the 3D concept view below for a rough rendering of the configuration.

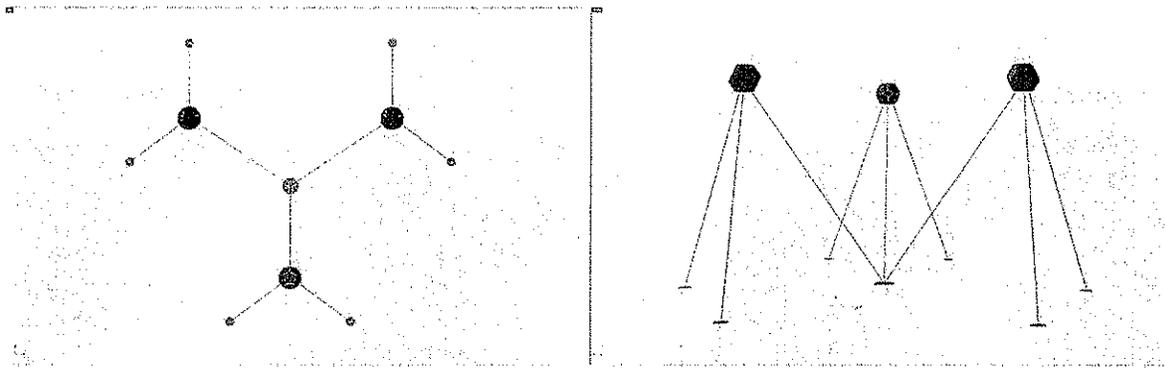


Figure 1: Plan view (left) and 3D side view (right) of pavilion/mooring configuration.

Local Avalon companies will be utilized for the project. This not only meets the City requirements for mooring installations but also ensures that local insurances and standards have been met. Examples of work that will be carried out by Avalon based firms include transporting the pavilion structures to Avalon, assisting with final assembly in the Catalina Boat Yard, and securing of the mooring blocks by Avalon Mooring & Diving Service, Inc. (referred to in the remainder of this document simply as Avalon Mooring). DOER Marine will provide GPS coordinates to Avalon Mooring for the placement of the seven mooring blocks (see Figure 2). The full system will fall within the dive park boundaries but outside the marine protected area. The area identified within the dive park for the temporary moorings is one that is not subject to close/passing vessel traffic and is in a remote area of the dive park that has low utilization. This location is optimal for safety of the pavilions, boating traffic and visitors. Divers visiting this section of the park are typically the most experienced visitors, most with advanced diving certifications. The pavilions and their mooring lines represent no entanglement hazard.

The project also includes the installation of a live feed video system. This is similar to the existing live feed from Avalon Harbor. It provides visitors with a way to enjoy the pavilions without ever entering the water. It also allows monitoring for early detection of any problem that might arise.

Avalon Mooring will assist with the installation of this feature. A single cable will run to shore from an electrical housing anchored to the central mooring block. On shore, the cable will be routed to a temporary shed behind the Catalina Casino via rubber cable protector mats. Power will be provided by the Casino.

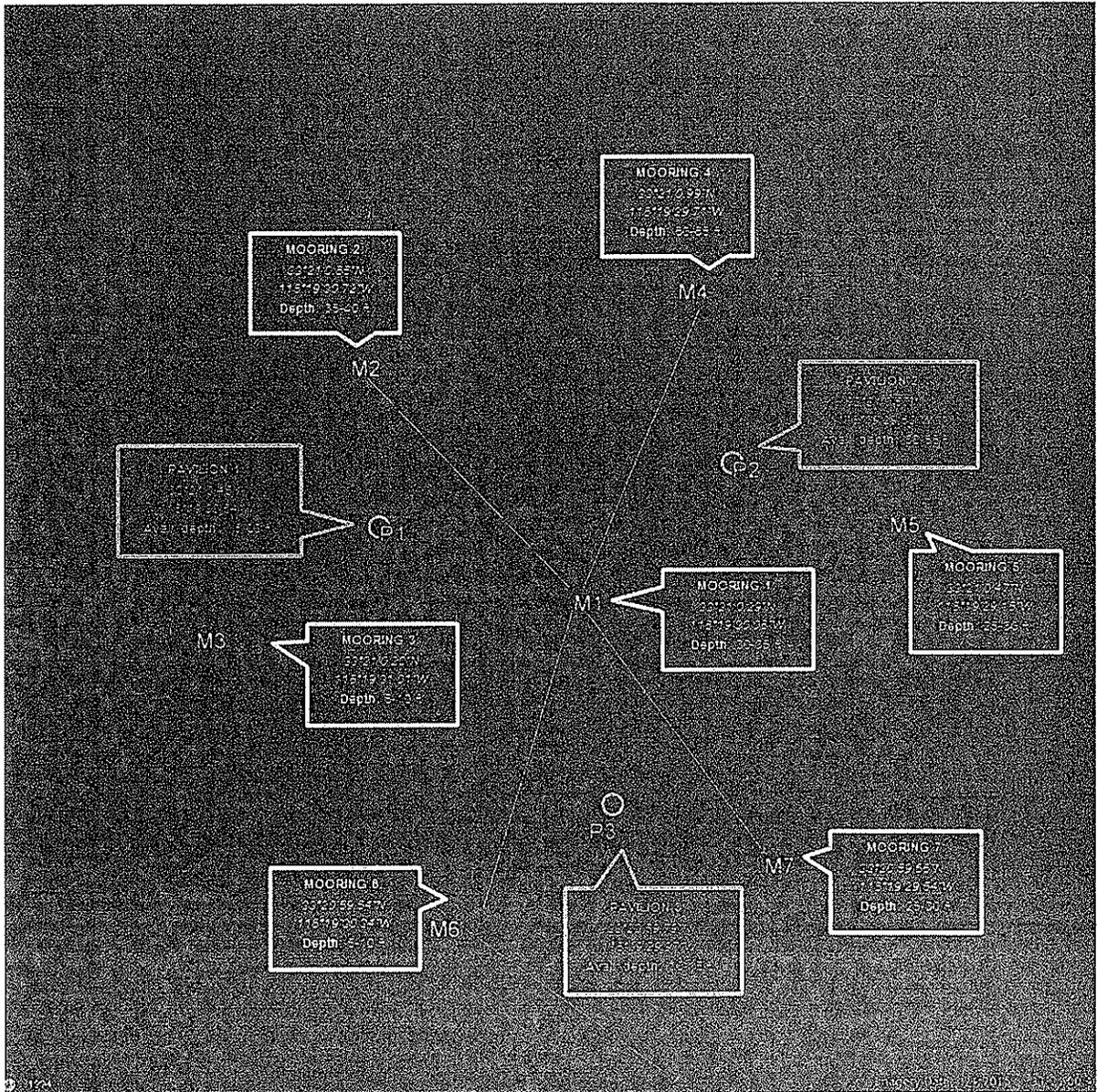


Figure 2: GPS coordinates and basic locations for moorings and pavilions.

Install Plan

The pavilions will be shipped in semi-disassembled pieces from the Port of Los Angeles/San Pedro to Pebbly Beach in Catalina by Avalon Freight Services. Avalon Freight Services will load the pieces onto a

flatbed truck and deliver them to the designated space in the Catalina Boat Yard. Project personnel will complete the assembly of each pavilion.

The moorings and pavilions will be installed by Avalon Mooring. The timeline of the install plan is as follows:

Day 1: Install Mooring Blocks

Avalon Mooring will manufacture the seven mooring blocks (see Figure 3 for example) and install the blocks at the GPS coordinates provided by DOER Marine. Because Avalon Mooring already handles the existing moorings in the dive park, they are familiar with the boundaries of the park and best practices for placement. One day has been set aside for mooring block install, with one additional day for contingency.

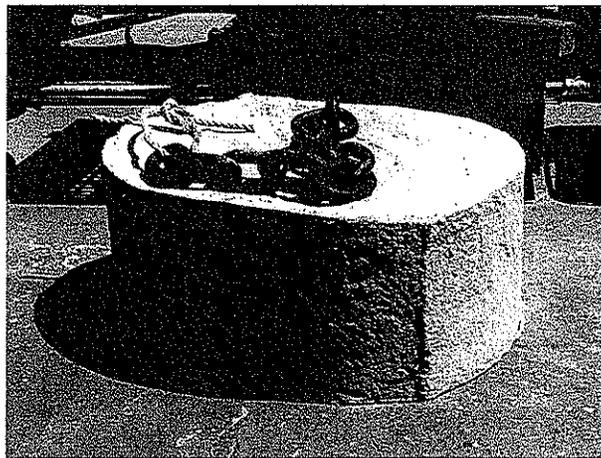


Figure 3: Example of a 2500-lb concrete mooring block.

Day 2: Install Live Feed

Avalon Mooring will again provide their boat and crew for one day. A team of their divers will assist DOER Marine with installation of the camera interface housing at the central mooring, plus laying the cable securely and safely along the bottom to shore. DOER Marine will provide on-shore components.

Day 3-5: Install Pavilion Structures

One day per pavilion has been set aside for installation of the buoyant pavilion structures. The process will begin with the Catalina Boat Yard assisting with using a launch trailer to dispatch a pavilion into the water. Avalon Mooring will tow the pavilion across to the dive park. They will then winch down each structure, and their dive team will secure the polypropylene lines to the mooring chains. Camera system will be positioned and wet mated (plugged in) at this time.

Removal Plan

At the end of the installation, the pavilions will need to be removed from Catalina. This is planned for December which is a normal end to the dive season. As previously mentioned, the mooring blocks will be repurposed to the dive park.

Day 1-3: Remove Pavilion Structures

One day per pavilion has been set aside for removal of the system. This includes removal of the cable, camera system, and pavilion structures. A team of divers will release the mooring line shackles, causing the buoyant pavilion structures to float to the surface. Once at the surface, Avalon Mooring will tow the pavilions back to the Catalina Boat Yard for disassembly. At the end of the project, the pavilion parts will be shipped back via the Avalon Freight Service for the Doug Aitken Studio's future use.

Potential Obstacles

DOER Marine has studied recent historical weather and climate conditions (i.e. wave height, wind speeds, etc.) in and near Catalina. In addition, we have listened to some of the long time divers in the area and met with Avalon Mooring to validate the data and to obtain a good cross section of experience for reference and planning. Common experiences with Santa Ana Winds, Catalina Eddy, and the possibility of hurricanes all point to the necessity of having an emergency removal plan for the pavilions.

DOER will monitor such conditions in advance and plan accordingly. For example, Avalon experienced the effects of Hurricane Marie in 2014. Hurricane Marie started as a tropical wave that crossed Central America. By the time it was classified as a hurricane, it was still south of Mexico. Even with some warning, Avalon still sustained numerous damages to moorings, boats, and beaches. If another storm were to occur this season, the project would err on the side of caution, and be ready to make a storm-condition controlled removal of the pavilions well in advance of it reaching Catalina. Please see the contingency plan for details.

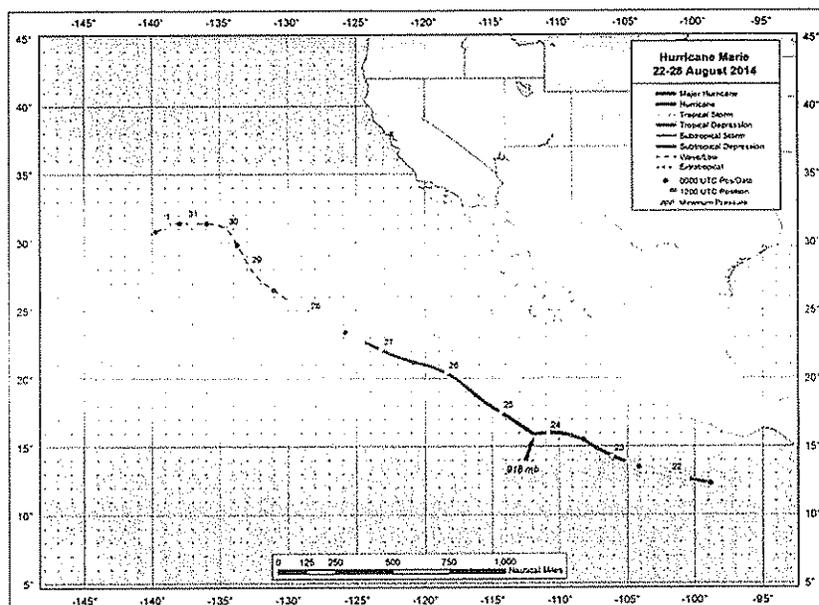


Figure 4: Path of Hurricane Marie in August 2014 starting off the coast of Mexico
[Courtesy of NOAA: http://www.nhc.noaa.gov/data/tcr/EP132014_Marie.pdf]

Contingency Plan for Removal

According to Avalon Mooring, it would take a day to remove the structures in storm conditions. A diver team would unplug the camera system and release the shackles on the lines, allowing the pavilions to float to the surface. Avalon Mooring would then tow the pavilions to the Cabrillo Mole Crane, where each one would be lifted to shore. The pavilions would be lifted to a flatbed truck that would take them back to the Catalina Boat Yard, where they would stay until further notice.

The moorings can remain in place under these circumstances. The camera system components will not require removal as they can be securely anchored in place to endure storm conditions.

Summary

DOER Marine and Avalon Mooring both believe that the Pavilions should fall under a temporary-replacement mooring category. This provides a safe and proven effective methodology that is familiar to the maritime businesses in Avalon and to the Harbormaster. The pavilions meet the parameters for a temporary mooring installation yet represent far less risk than a traditional mooring. Because there are no fuels or oils, there is no pollution risk. Because the project is in the dive park, there is no navigational hazard for other vessels. Because certified divers will be visiting the pavilions, there is no additional liability to the City than what they might normally experience in public dive park operations. The pavilions plan has been modified to eliminate the floating platform. This was the element that the City had expressed primary concern about in regard to safety. The park already has submerged points of interest including giant kelp, a submerged platform, moorings, and two wrecks. The pavilions are no more hazardous than these existing features. Local dive shops that rent the majority of gear used in the park and provide air fills already utilize liability releases and waivers which provide an additional layer of protection to dive operators and to the City of Avalon for any injury resulting from use of the dive park. The principals of the pavilions project will carry all of the normal marine insurance required under the City's mooring permit and like any other mooring proposal, will be reviewed and overseen by the Harbormaster.

The Pavilions project will bring greater, "beyond art" awareness about the importance of ocean health and protection to the general public and will help promote Avalon as a City that people can point to as an example of good ocean stewardship.

Contact information:

For DOER Marine: Liz Taylor or Ian Griffith 510-530-9388 Liz@doermarine.com or ian@doermarine.com

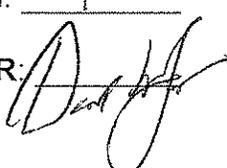
For Parley Foundation: Bill Samuels or Iva Rukelj bill@wrsamuelslaw.com or iva@wrsamuelslaw.com

For Doug Aitken Studio: Doug Aitken 310-822-6550 dougaitken1@gmail.com

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016
ORIGINATING DEP: Finance
PREPARED BY: Robert Mescher, Finance Director
SUBJECT: Lease Purchase Agreement for the Joe Machado Field Artificial Turf Project

AGENDA ITEM: 4

CITY MANAGER: 

RECOMMENDED ACTION(S): Adopt the resolution authorizing the City Manager to execute and deliver the lease purchase agreement subject to review and approval from the City Legal Counsel.

REPORT SUMMARY: At the June 28, 2016 City Council Meeting, the City Council awarded a contract to design and construct an artificial turf surface at Joe Machado Field to improve the City's water conservation and safety. The total contract cost was \$1,275,000 plus a 15% contingency. Anheuser Busch donated \$500,000 to be applied toward the project and the City Council appropriated funds from the General Fund to be utilized for the remaining cost of the project. City Council directed Staff to investigate outside funding opportunities and financing.

Staff has been unable to obtain funding assistance from other agencies.

Staff contacted several lenders and obtained an offer to finance the remaining cost of the project with a lease purchase agreement. The interest rate would be 2.89% with payment terms of eight years, which is the length of the turf warranty.

A draft of the lease purchase agreement in its substantive form is attached.

GOAL ALIGNMENT: Not aligned.

FISCAL IMPACTS: The remaining cost of the project up to \$966,250 would be amortized over the next eight years and paid from the General Fund. Depending upon how much of the 15% contingency is required, the annual payments though FY24-25 would be between \$109,892 and \$137,011.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The remaining cost of the project, up to \$966,250 would be funded from the General Fund in FY16-17.

FOLLOW UP ACTION: Execute Lease Purchase Agreement

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: Draft Lease Purchase Agreement and Resolution

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016 **AGENDA ITEM:** _____
ORIGINATING DEP: Finance **CITY MANAGER:** _____
PREPARED BY: Robert Mescher, Finance Director
SUBJECT: Lease Purchase Agreement for the Joe Machado Field Artificial Turf Project

RECOMMENDED ACTION(S): Adopt the resolution authorizing the City Manager to execute and deliver the lease purchase agreement subject to review and approval from the City Legal Counsel.

REPORT SUMMARY: At the June 28, 2016 City Council Meeting, the City Council awarded a contract to design and construct an artificial turf surface at Joe Machado Field to improve the City's water conservation and safety. The total contract cost was \$1,275,000 plus a 15% contingency. Anheuser Busch donated \$500,000 to be applied toward the project and the City Council appropriated funds from the General Fund to be utilized for the remaining cost of the project. City Council directed Staff to investigate outside funding opportunities and financing.

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FOLLOW UP ACTION: Execute Lease Purchase Agreement

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: Draft Lease Purchase Agreement and Resolution

RESOLUTION _____

RESOLUTION OF THE CITY COUNCIL OF AVALON AUTHORIZING APPROVING THE LEASE
PURCHASE AGREEMENT FOR THE JOE MACHADO FIELD ARTIFICIAL TURF PROJECT

WHEREAS, the City of Avalon, California (the "Lessee") is a political subdivision duly organized under the constitution and laws of the State of California; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition and installation of a synthetic multi-purpose field at Joe Machado Field (the "Equipment"); and

WHEREAS, it is necessary and desirable and in the best interest of the Lessee, as lessee, to enter into an Equipment Lease Purchase Agreement (the "Agreement") with First Security Finance, Inc., as lessor (the "Lessor"), for the purposes described therein, including the leasing of the Equipment;

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF THE CITY OF AVALON, CALIFORNIA, AS FOLLOWS:

Section 1. The Agreement, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the City Manager of the Lessee is hereby authorized to execute and deliver the Agreement on behalf of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 2. The Escrow Agreement (the "Escrow Agreement"), among the Lessee, the Lessor and the escrow agent named therein, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the Escrow Agreement is hereby authorized to be executed and delivered on behalf of the Lessee by a duly authorized officer of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 3. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Agreement and the Escrow Agreement.

Section 4. This Resolution shall take effect and be in full force immediately after its adoption by the governing body of the Lessee.

PASSED AND ADOPTED by the governing body of the City of Avalon, California, this 6th day of September, 2016.

AYES:
NOES:
ABSENT:
ABSTAIN:

Ann H. Marshall, Mayor

ATTEST:

Denise A. Radde, City Clerk

\$966,250
EQUIPMENT LEASE PURCHASE AGREEMENT
DATED AS OF SEPTEMBER 13, 2016,
BETWEEN
FIRST SECURITY FINANCE, INC., AS LESSOR, AND THE
CITY OF AVALON, CALIFORNIA, AS LESSEE

CLOSING DATE: SEPTEMBER 13, 2016

LIST OF CLOSING DOCUMENTS

**Document
Number**

1. Equipment Lease Purchase Agreement, with the following exhibits attached:
Exhibit A: Equipment Description.
Exhibit B: Payment Schedule.
2. Escrow Agreement, with the following exhibit attached:
Exhibit A: Certificate of Acceptance and Payment Request.
3. Lessee's Closing Certificate, with the following exhibits attached:
Exhibit A: Authorizing resolution from Lessee's governing body.
Exhibit B: List of Outstanding Obligations (since June 30, 2015).
(For completion by Lessee.)
4. Essential Use Certificate. **(For completion by Lessee.)**
5. Opinion of Lessee's Counsel.
6. IRS Form 8038-G.
7. Evidence of Insurance (including rental interruption insurance).
8. Notice of Assignment.
9. UCC-1 Financing Statements:
 - A. Respecting the Equipment.
 - B. Respecting the Assignment.
10. Purchaser's Certificate from Capital One Public Funding, LLC, together with related correspondence to Lessee.
11. Lessee's Form W-9. **(On file with Lessor.)**

#

EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT (the "Agreement"), is dated as of September 13, 2016, between **FIRST SECURITY FINANCE, INC.**, a corporation organized and existing under the laws of the State of Arkansas, as Lessor ("Lessor"), and the **CITY OF AVALON, CALIFORNIA**, a political subdivision existing under the laws of the State of California, as Lessee ("Lessee"), wherein the parties hereby agree as follows:

Section 1. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Equipment Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" is the date when the term of this Agreement and Lessee's obligation to pay rent commences, which date will be the earlier of (i) the date on which the Equipment is accepted by Lessee in the manner described in **Section 13**, or (ii) the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with an escrow agent.

"Equipment" means the property described on the Equipment Schedule attached hereto as **Exhibit A**, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

"Event of Default" means an Event of Default described in **Section 35**.

"Issuance Year" is the calendar year in which the Commencement Date occurs.

"Lease Term" means the period from the Commencement Date through the last Rental Payment Date, but subject to extension pursuant to **Section 5** and earlier termination pursuant to **Section 6**.

"Lessee" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

"Lessor" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Payment Schedule" means the schedule of Rental Payments and Purchase Price set forth on **Exhibit B**.

"Purchase Price" means the amount set forth on the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Equipment.

"Rental Payment Dates" means the dates set forth on the Payment Schedule on which Rental Payments are due.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to **Section 9**.

"State" means the State of California.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom the Equipment is or has been purchased, as listed on **Exhibit A**.

Section 2. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

(a) Lessee is a political subdivision duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a political subdivision. Lessee has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.

(b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.

(f) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.

(g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.

(h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.

(i) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(j) The Equipment described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(k) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(l) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(m) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of this Agreement, would have caused any portion of this Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(n) Lessee has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of Lessee.

(o) To the knowledge of Lessee, based on Vendor's representations, the useful life of the Equipment will not be less than the Lease Term.

(p) The application, statements and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Agreement and the escrow agreement, if any, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(q) Lessee has provided Lessor with audited financial statements through June 30, 2015. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under the Agreement since June 30, 2015.

(r) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment under the Agreement over the amount deposited by Lessor in the escrow fund, if any, established under any related escrow agreement and interest earnings thereon.

(s) Lessee agrees that proceeds of the Agreement shall be held in escrow by an escrow agent appointed by Lessor (or assignee thereof) and invested as directed by Lessor (or assignee thereof) within the authority granted by Section 53601(m) of the California Government Code.

Section 3. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Equipment, together with any costs of entering into this Agreement that are expected to be financed under this Agreement, will not be less than the total principal portion of the Rental Payments.

(b) The Equipment has been ordered or is expected to be ordered within six months of the Commencement Date, and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within eighteen months of the Commencement Date.

(c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

(e) To the best of our knowledge, information and belief, the above expectations are reasonable.

Section 4. Lease of Equipment. Lessor hereby demises, leases and lets the Equipment to Lessee, and Lessee rents, leases and hires the Equipment from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 5. Extension of Lease Term. If, on the last day of the Lease Term, the Rental Payments have not been fully paid or provided for, or if the Rental Payments have been abated at any time and for any

reason, the Lease Term will be extended until the date upon which all Rental Payments have been fully paid, except that the Lease Term will in no event extend beyond the useful life of the Equipment.

Section 6. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) the exercise by Lessee of the option to purchase the Equipment under the provisions of **Section 31** and payment of the Purchase Price and all amounts payable in connection therewith;

(b) a default by Lessee and Lessor's election to terminate this Agreement under **Section 36**; or

(c) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Lease Term.

Section 7. Annual Budgets. Lessee will, in accordance with the requirements of law, and except as set forth in **Section 8**, annually budget and appropriate sufficient funds to make the Rental Payments scheduled to come due during the fiscal year covered by that budget and to meet its other obligations under this Agreement for that fiscal year. Lessee has not pledged any tax revenues to the payment of Rental Payments hereunder.

Section 8. Rental Abatement. Rental Payments due hereunder and other amounts due hereunder or under an escrow agreement will be subject to abatement during any period in which, by reason of material damage to or destruction or condemnation of the Equipment or the real property on or in which it is located, there is substantial interference with the use and right of possession by Lessee of the Equipment or any substantial portion thereof. Lessee will immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's use and possession of the Equipment. For each potential incident of substantial interference, decisions to be made on (a) whether or not abatement will apply; (b) the date upon which abatement will begin; (c) the applicable portion of Rental Payments to be abated; and (d) the concluding date of the particular abatement, will all be subject to determinations by Lessee and Lessor in concert with the provider of the rental interruption insurance issued pursuant to **Section 22**. The amount of rental abatement will be such that the Rental Payments paid by Lessee during the period of Equipment restoration do not exceed the fair rental value for the usable portions of the Equipment. In the event of any damage or destruction to the Equipment, this Agreement will continue in full force and effect notwithstanding any abatement of Rental Payments pursuant to this Section. To the extent permitted by law, Lessee waives the benefits of Civil Code Section 1932 and any and all other rights to terminate this Agreement by virtue of any interference with the use and possession of the Equipment; provided that such waiver will not constitute a waiver of the abatement of Rental Payments as set forth in this Section.

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Equipment during the fiscal year in which such payments are due. Any Rental Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from its due date.

If, as the result of a final action of the Internal Revenue Service, it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation due to any act or omission of Lessee, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount on the basis that the interest portion of Rental Payments is subject to (a) federal income tax at the highest marginal corporate tax rate and (b) state and local income tax at the highest marginal tax rate or similar tax rate as may be applicable in each state or locality, as applicable.

Section 10. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 11. Rental Payments To Be Unconditional. Except as provided in **Section 8**, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants

and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances.

Section 12. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee, and will not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

Section 13. Delivery, Installation and Acceptance of the Equipment. Lessee will order the Equipment, cause the Equipment to be delivered and installed at the location specified on **Exhibit A** and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed, Lessee will immediately accept the Equipment and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After it has been installed, the Equipment will not be moved from the location specified on **Exhibit A** without Lessor's consent, which consent will not be unreasonably withheld.

Section 14. Enjoyment of Equipment. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 15. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 16. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

Section 17. Maintenance of Equipment. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Equipment. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor.

Section 18. Title to the Equipment. During the Lease Term, title to the Equipment and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Equipment to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 31** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor.

Section 19. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the Equipment and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Equipment.

As further security therefor, Lessee grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising the escrow fund, if any, established under any related escrow agreement and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party.

Section 20. Personal Property. Lessor and Lessee agree that the Equipment is and will remain personal property. The Equipment will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee will pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term.

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b) as set forth in the evidence of insurance provided by Lessee attached hereto as **Exhibit C**. All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Lessee shall also cause Vendor to provide to Lessee and Lessor a payment and performance bond naming Lessor as a dual obligee and issued by a surety company rated "A" or better by AM Best. All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessor as a loss payee and an additional insured and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

In addition to the insurance described above, Lessee will, at its own expense, maintain rental interruption insurance to cover Lessor's loss, total or partial, of Rental Payments resulting from the loss, total or partial, of the use or possession of any part of the Equipment as a result of any hazard in an amount sufficient at all times to pay an amount not less than the Rental Payments payable by Lessee during a 24 month period. Such rental interruption insurance will be payable for a period adequate to cover the period of repair or reconstruction. Such insurance may be maintained in conjunction with or separate from any other similar insurance maintained by Lessee. All insurance proceeds will be payable to Lessor

in amounts proportionate to the loss of use of the Equipment and will supplement Lessee's applicable Rental Payments, if any, during the restoration period in sufficient amount to make Lessor whole during the period of abatement. Lessee will not be permitted to self-insure its obligation under this paragraph.

Section 23. Advances. In the event Lessee fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Equipment in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums on the thereof, pay such taxes and charges and make such Equipment repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Within 270 days after the end of each fiscal year, Lessee will provide Lessor with current financial statements and budgets for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 25. Release and Indemnification. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 26. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 27. Damage, Destruction, Condemnation; Use of Proceeds. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the interest of Lessee or Lessor in the Equipment or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee has exercised its option to purchase the Equipment pursuant to **Section 31**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 27**, Lessee will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Equipment pursuant to **Section 31**. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Equipment will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under **Section 9**.

Section 29. Disclaimer of Warranties. *LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL*

DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

Section 30. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Equipment; Lessee is advised to contact the Vendor for a description of any such rights. Lessee hereby assigns to Lessor during the Lease Term all warranties running from Vendor to Lessee. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

Section 31. Purchase Option. Lessee will have the option to purchase the Equipment, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor; or

(b) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Equipment, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months; or

(c) In the event monies remain in any escrow fund established under an escrow agreement, upon receipt by the escrow agent under such escrow agreement of a duly executed certificate of acceptance and payment request identified as the final such request, the remaining monies in such escrow fund shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with such escrow fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, for application against the outstanding principal components of Rental Payments, including prepayment of Rental Payments hereunder, unless Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached hereto will be revised accordingly.

Upon the exercise of the option to purchase set forth above, title to the Equipment will be vested in Lessee, free and clear of any claim by or through Lessor.

Lessee will have the option to prepay in part outstanding Principal components of Rental Payments, without payment of any prepayment premium, upon giving written notice to Lessor at least 30 days before the date of prepayment, on any Rental Payment Date. Such option may be exercised only one time by Lessee. In the event of any such prepayment, the Payment Schedule will be revised to reflect a principal reduction in inverse order of Rental Payment Dates and shall supersede and replace the initial Payment Schedule attached hereto as **Exhibit B**, as specified by Lessor and acknowledged by Lessee, without any further action by Lessor or Lessee.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to **Section 31** represents the fair purchase price of the Equipment. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Equipment. Lessee hereby determines and declares that the acquisition and installation of the Equipment and the leasing of the Equipment pursuant to this Agreement will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Equipment were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Lease Term does not exceed the useful life of the Equipment.

Section 33. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; and such assignment, transfer or conveyance shall be made only to (i) an affiliate of Lessor or (ii) banks, insurance companies or other financial institutions or their affiliates, but no such assignment, transfer or conveyance shall be effective as against Lessee unless and until Lessor has delivered to Lessee written notice thereof that discloses the name(s) and address(es) of the assignee(s) or the Lease Servicer (as hereafter provided). Nothing herein shall limit the right of Lessor or its assignees to sell, assign or grant participation interests in this Agreement to one or more entities listed in (i) or (ii); provided that if such assignment is made pursuant to a participation, custodial or similar agreement under which multiple ownership interests in this Agreement are created, it shall establish a single entity, owner, servicer or other fiduciary or agent to act on behalf of all of the holders of such participation interests (herein referred to as the "Lease Servicer") with respect to the rights and interests of such holders hereunder, including the exercise of rights and remedies thereunder upon the occurrence of an event of default or an event of non-appropriation, and further including the maintenance of a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Lessee will retain all notices of assignment as a register of all assignees and will make all payments to the assignee, assignees or Lease Servicer designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor.

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Equipment.

Section 35. Events of Default Defined. Any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder within **[**5**]** days of the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 35(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably

withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

(e) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of **[**45**]** consecutive days.

Section 36. Remedies on Default. Whenever any Event of Default exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) With or without terminating this Agreement, Lessor may, upon prior written notice to Lessee, enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at a place specified by Lessor, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (a) shall not exceed the Rental Payments and other amounts otherwise due hereunder plus the remaining Rental Payments and other amounts payable by Lessee to the end of the Lease Term; and provided further that any liability for such remaining Rental Payments and other amounts shall be required to be paid by Lessee only at the times provided for the payment of such amounts under the provisions of this Agreement; and

(b) Lessor may take whatever other action at law or in equity may appear necessary or desirable to collect the Rental Payments then due and to collect as they come due the Rental Payments thereafter to become due during the Lease Term, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Agreement.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as

often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 38. Notices. All formal notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or sent via commercial overnight courier, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

Notwithstanding the foregoing, Lessor and Lessee may communicate as needed to coordinate performance of this Agreement via communication by letter, e-mail, telephone or other electronic communication.

Section 39. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 40. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 41. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 42. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 43. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 44. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 45. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 46. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[The remainder of this page left blank intentionally.]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their corporate names by their duly authorized officers as of the date first above written.

FIRST SECURITY FINANCE, INC.

By: _____
Name: _____
Title: _____
Address: First Security Center
521 President Clinton Avenue, Ste. 800
Little Rock, AR 72201

CITY OF AVALON, CALIFORNIA

By: _____
Name: _____
Title: _____
Address: 410 Avalon Canyon Road
Avalon, CA 90704

CERTIFICATION

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee, and (ii) that the fiscal year of Lessee is from July 1 to June 30.

DATED: September 13, 2016.

By: _____
Name: _____
Title: _____

EXHIBIT A TO EQUIPMENT LEASE PURCHASE AGREEMENT

EQUIPMENT SCHEDULE

Equipment Description:

The Equipment consists of a synthetic multi-purpose field (approximately 225 ft. x 345 ft.) located at Joe Machado Field, as further described in the attached quote from Hellas Construction, Inc., together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof.

Location:

The Equipment will be located at the following address:

Joe Machado Field
1000 Avalon Canyon Road
Avalon, CA 90704

Vendor:

Vendor: Hellas Construction, Inc., 12710 Research Boulevard, Suite 240, Austin, TX 78759.

This Equipment Schedule shall be deemed to be supplemented by the descriptions of the Equipment included in the Certificate of Acceptance and Payment Requests submitted to TMI Trust Company, as escrow agent, pursuant to the Escrow Agreement dated as of September 13, 2016, among Lessor, Lessee and TMI Trust Company, as escrow agent, which descriptions shall be deemed to be incorporated herein.



June 15, 2016

City of Avalon: Recreational Department
410 Avalon Canyon Rd
PO Box 707
Avalon, CA 90704

RE: Design/Build Conversion of Joe Machado Field to Synthetic Multi-Purpose Field

Hellas Construction, Inc. is pleased to provide this quote as requested for a multi purpose synthetic turf athletic field.

Base Proposal

Design/Build Conversion of Joe Machado Field to Synthetic Multi-Purpose Field with:

- *Matrix*[®] 46 oz. *Helix* Synthetic Turf System with *GeoPlus* organic infill with its Kifco Irrigation System, *NEXXPAD*[®] Pad system.

BASE PROPOSAL SCOPE OF WORK

General Conditions

1. Complete design for the project, including drawings and specifications.
2. Provide project insurance, Supervision and Mobilization.
3. Provide and review soils tests.
4. Provide performance and payment bonds.
5. Provide construction surveying, layout and staking.
6. Provide, prior to construction, all required submittals.
7. Provide an updated monthly schedule.
8. Obtain all necessary permits and pay necessary fees.
9. Conduct a monthly construction site meeting.
10. Provide final punch-out and clean-up of the completed project.

12710 Research Boulevard
Suite 240
Austin, Texas 78759



Phone (512) 250-2910
Fax (512) 250-1980
info@hellasconstruction.com

WWW.HELLASCONSTRUCTION.COM



Synthetic Turf Athletic Field

SITE WORK

1. Mobilization, utility location and one (1) construction sign.
2. Survey and layout of Hellas scope of work.
3. Erosion and Sediment Control
4. Construction Entrance.
5. Strip Topsoil and haul off-site.
6. Laser grade subgrade – 70,382 SF.
7. Install 12" HDPE Perforated pipe drain line – tie into existing storm system inside field limits – 580 LF of pipe.
8. Install 1" x 12" Hydraway panel drains – 1,250 LF.
9. Install liner 20 mil – 70,382 SF.
10. Install 2" #57 base stone – 959 TONS.
11. Install 1" #89 finish stone – 402 TONS.
12. Laser grade finish stone – 70,382 SF.
13. Sport Equipment
 - a. Goal Posts – 2 EA Goalpak High School Football/ Soccer Goal System.
 - b. Baseball Bases – 1 Set
14. Installation of a 5,000 gallon water tank – 1 LS

SYNTHETIC TURF

1. *Matrix*[®] 46 oz. *Helix* synthetic turf – 70,382 SF.
 2. *NEXXPAD*[®] pad system – 70,382 SF.
 3. *GeoPlus Infill* – 1 LS
 4. Inlaid Hash Marks – 1 LS.
 5. Inlaid Football – 1 L.S.
 6. Inlaid Soccer – 1 LS.
 7. 8 Yr Warranty
-



WWW.HELLASCONSTRUCTION.COM



PROJECT EXCLUSIONS FOR BASE SCOPE OF WORK

1. Any item of work not explicitly listed above.
2. Rock excavation or haul off.
3. Site security.
4. Poor subgrade soils.
5. Construction signs beyond one (1) sign.
6. Design and implementation of dewatering.
7. Any embankment or processing of imported soils.
8. Any Allowances or Contingencies.
9. Any concrete work outside the scope of this proposal.
10. Owner shall provide ingress/egress for ALL personnel, equipment and materials; typical construction traffic shall be expected for the duration of this contract. Contractor NOT responsible for damage due to typical construction traffic ingress/egress to the construction site.

Notwithstanding anything to the contrary in any of the Contract documents, under no circumstances shall the Performance bonds, maintenance bonds or the obligations of the Surety be liable for any warranty obligations that exceed 1 year from the date of substantial completion as defined in the Contract documents.


Saul Hernandez
Estimator
Hellas Construction, Inc.



WWW.HELLASCONSTRUCTION.COM

Joe Machado Field

AM DOCUMENT 15763

FOR EXAMINATION, APPROVAL AND CERTIFICATION FOR FURNISHING, CONSTRUCTION, INSTALLATION AND COMPLETION OF THE WORK DESCRIBED IN THE SPECIFICATIONS AND CONTRACT DOCUMENTS, THE CONTRACTOR HAS SUBMITTED THE FOLLOWING PROPOSAL FOR THE WORK DESCRIBED IN THE SPECIFICATIONS AND CONTRACT DOCUMENTS.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE	TAXES	TOTAL PRICE WITH TAXES	PERCENTAGE OFFERED TO DATE	DATE	REMARKS	REMARKS				
												AMOUNT	PERCENTAGE		
001	General Conditions	1	Lot	\$ 125,000.00	\$ 125,000.00	0.00%	\$ 125,000.00	0.00%							
002	Excavation & Enclosures	1	Lot	\$ 125,000.00	\$ 125,000.00	0.00%	\$ 125,000.00	0.00%							
003	Turf Field Erector 12' HDPE	1	Lot	\$ 20,000.00	\$ 20,000.00	0.00%	\$ 20,000.00	0.00%							
004	Turf Field Vertical Drainage System	1	Lot	\$ 125,000.00	\$ 125,000.00	0.00%	\$ 125,000.00	0.00%							
005	Sports Equipment	1	Lot	\$ 25,000.00	\$ 25,000.00	0.00%	\$ 25,000.00	0.00%							
006	Box Water & Water Tank	1	Lot	\$ 25,000.00	\$ 25,000.00	0.00%	\$ 25,000.00	0.00%							
007	Water Irrigation System	1	Lot	\$ 25,000.00	\$ 25,000.00	0.00%	\$ 25,000.00	0.00%							
008	Turf Fields 46 or 48 ft x 96 ft w Grass Plus Organic Infill	1	Lot	\$ 481,500.00	\$ 481,500.00	0.00%	\$ 481,500.00	0.00%							
009	MemPad	1	Lot	\$ 25,000.00	\$ 25,000.00	0.00%	\$ 25,000.00	0.00%							
010															
011															
012															
013															
014															
015															
016															
GRAND TOTALS											\$ 1,275,000.00	\$ 1,275,000.00	0.00%		

EXHIBIT B TO EQUIPMENT LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Principal Amount: \$966,250

Interest Rate: 2.89%

Rental payments will be made in accordance with **Section 9** and this Payment Schedule.

Rental Payment Date	Total Rental Payment	Principal Portion	Interest Portion	Purchase Price
09/13/2017	\$137,010.50	\$109,085.87	\$27,924.63	\$874,307.41
09/13/2018	137,010.49	112,238.45	24,772.04	759,824.19
09/13/2019	137,010.49	115,482.14	21,528.35	642,032.41
09/13/2020	137,010.49	118,819.57	18,190.92	520,836.45
09/13/2021	137,010.49	122,253.46	14,757.03	396,137.92
09/13/2022	137,010.49	125,786.58	11,223.91	267,835.61
09/13/2023	137,010.50	129,421.82	7,588.68	135,825.35
09/13/2024	137,010.49	133,162.11	3,848.38	0.00
Totals	<u>\$1,096,083.94</u>	<u>\$966,250.00</u>	<u>\$129,833.94</u>	

CITY OF AVALON, CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT C TO EQUIPMENT LEASE PURCHASE AGREEMENT

EVIDENCE OF SELF INSURANCE

[To be provided by Lessee.]

ESCROW AGREEMENT

LESSOR:
First Security Finance, Inc.
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

ESCROW AGENT:
TMI Trust Company
901 Summit Avenue
Fort Worth, TX 76102
Attention: Corporate Trust Department

LESSEE:
City of Avalon, California
410 Avalon Canyon Road
Avalon, CA 90704

THIS ESCROW AGREEMENT (this "Escrow Agreement") dated September 13, 2016 is entered into by and among First Security Finance, Inc. ("Lessor"), the City of Avalon, California ("Lessee"), and TMI Trust Company (the "Escrow Agent").

Lessor and Lessee have heretofore entered into that certain Equipment Lease Purchase Agreement dated September 13, 2016 (the "Agreement"). The Agreement contemplates that certain Equipment described therein (the "Equipment") is to be acquired from the vendor(s) or manufacturer(s) thereof.

After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Agreement.

The Agreement contemplates that Lessor will deliver to the Escrow Agent cash in the amount of \$966,250, to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such cash, together with all interest and additions received with respect thereto (hereinafter, the "Escrow Fund"), is to be applied from time to time to pay certain costs of acquiring the Equipment (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee and, if requested by Lessee, to pay certain costs of entering into the Agreement).

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and Lessor and all interest earned with respect to the Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

To the limited extent required to perfect the security interest granted by Lessee to Lessor in the cash and negotiable instruments from time to time comprising the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

2. On such day as determined to the mutual satisfaction of the parties (the "Commencement Date"), Lessor shall deliver to the Escrow Agent cash in the amount of \$966,250 to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the funds delivered to the Escrow Fund by Lessor, and further agrees to hold the amount so delivered together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.

3. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its

nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).

4. Lessee hereby directs the Escrow Agent to invest the cash comprising the Escrow Fund from time to time in Qualified Investments (as hereinafter defined). Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be held in and comprise a part of the Escrow Fund. No investment shall be made that would cause the Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended. For the purpose of this paragraph 4, the term "Qualified Investments" means an interest bearing demand account of any bank or trust company which the Escrow Agent has a fiduciary banking relationship located within the United States, *provided*, that any such bank or trust company must have capital and surplus of at least \$500,000,000, or such other investments as Lessee may specify in writing, to the extent the same are at the time legal for investment of the funds being invested.

5. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:

a. From time to time, the Escrow Agent shall pay the vendor or manufacturer of the Equipment or Lessee or other payee upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as **Exhibit A** to this Escrow Agreement approved for payment by Lessor, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the requisition request, (c) in the event that certain costs of entering into this Agreement are described in the requisition request, invoice(s) or other evidence specifying the amount(s) of such costs, and (d) any additional documentation required by Lessor. Lessor shall not approve any such payment unless and until Lessee shall have caused Vendor to provide to Lessor a payment and performance bond naming Lessor as a dual obligee and issued by a surety company rated "A" or better by AM Best in form and substance satisfactory to Lessor.

b. In the event that Lessor provides to the Escrow Agent written notice of the occurrence of an Event of Default by Lessee under the Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund.

c. Upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the remaining monies in the Escrow Fund shall, *first* be applied to all reasonable fees and expenses incurred by the Escrow Agent, if applicable, in connection herewith as evidenced by its statement forwarded to Lessor and Lessee; and, *second* be paid to Lessor, for application against the outstanding principal components of Rental Payments (as defined in the Agreement), including prepayment of Rental Payments under the Agreement, as provided therein, unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Payment Schedule attached to the Agreement will be revised accordingly as specified by Lessor.

6. The reasonable fees and expenses of the Escrow Agent incurred in connection herewith shall be the responsibility of Lessor and are herein defined as the sum of \$1,500, for escrow services as described herein; plus any extraordinary expenses incurred by the Escrow Agent at the request of Lessor or Lessee.

7. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessee and Lessor in connection with this Escrow Agreement which the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investment decisions made pursuant to Section 4, Qualified Investments at the direction of Lessee.

8. To the extent authorized by law, Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to the Escrow Agent's gross negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence, willful misconduct or bad faith by the Escrow Agent, its officers, agents, employees, successors or assigns.

9. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.

10. This Escrow Agreement and the Escrow Fund established hereunder shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 5(b) or Section 5(c) hereof.

11. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date or receipt.

12. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.

13. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.

14. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder and shall not be liable for any action taken or omitted in good faith in accordance with the advice of counsel, accountants or other skilled persons.

15. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.

16. This Escrow Agreement may be executed in several counterparts, and each counterpart so executed will be an original. In addition, the parties agree that the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[The remainder of this page left blank intentionally.]

17. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Escrow Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LESSOR: FIRST SECURITY FINANCE, INC.

By: _____

Name: _____

Title: _____

LESSEE: CITY OF AVALON, CALIFORNIA

By: _____

Name: _____

Title: _____

ESCROW AGENT: TMI TRUST COMPANY

By: _____

Name: _____

Title: _____

EXHIBIT A

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

TMI Trust Company (the "Escrow Agent"), as escrow agent under that certain Escrow Agreement dated September 13, 2016 (the "Escrow Agreement"), by and among the City of Avalon, California ("Lessee"), First Security Finance, Inc. ("Lessor") and the Escrow Agent, is hereby requested to pay from the Escrow Fund established and maintained thereunder, the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment and costs described below are (i) part or all of the Equipment listed in the Equipment Schedule to that certain Equipment Lease Purchase Agreement dated September 13, 2016 (the "Agreement"), between Lessor and Lessee, or (ii) costs incurred in entering into the Agreement:

QUANTITY	DESCRIPTION OF EQUIPMENT OR FINANCING COST	AMOUNT	PAYEE*
----------	--	--------	--------

Lessee hereby certifies and represents to and agrees with Lessor as follows: (i) the Equipment described above has been delivered and installed at the location(s) set forth in the Equipment Schedule; (ii) a present need exists for such Equipment which need is not temporary or expected to diminish in the near future; (iii) such Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority; (iv) the estimated useful life of such Equipment based upon the manufacturer's representations and Lessee's projected needs is not less than the term of lease with respect to such Equipment; (v) Lessee has conducted such inspection and/or testing of such Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts such Equipment for all purposes as of the date of this Certificate; (vi) such Equipment is covered by insurance in the types and amounts required by the Agreement; (vii) no Event of Default, as such term is defined in the Agreement, and no event which with the giving of notice or lapse of time or both, would become an Event of Default, has occurred and is continuing on the date hereof; and (viii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Agreement during Lessee's current fiscal year.

Based on the foregoing, Lessor is hereby authorized and directed to fund the acquisition of the Equipment set forth in the Agreement by paying, or causing to be paid, the manufacturer(s)/vendor(s), Lessee or other payee(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s); and/or (b) Copies of Certificate(s) of Origin, when applicable, designating Lessor as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE . Lessee paid an invoice prior to the commencement date identified in the Equipment Schedule and is requesting reimbursement for such payment. A copy of evidence of such payment together with a copy of Lessee's Declaration of Official Intent and other evidence that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150-2 is hereby attached.

* If required, a current IRS Form W-9 for the payee is attached or an IRS Form W-9 has been previously submitted to the Escrow Agent.

IF REQUEST IS FINAL REQUEST, CHECK HERE . Lessee hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Payment Requests previously filed by Lessee with Lessor constitutes all of the Equipment subject to the Equipment Schedule.

Date: _____, 20__.

Approved for Payment:

FIRST SECURITY FINANCE, INC., as Lessor

CITY OF AVALON, CALIFORNIA, as Lessee

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

LESSEE'S CLOSING CERTIFICATE

Re: Equipment Lease Purchase Agreement dated as of September 13, 2016, between the City of Avalon, California, as lessee ("Lessee"), and First Security Finance, Inc., as lessor ("Lessor") (the "Agreement")

I, the undersigned, the duly appointed, qualified and acting Director of Finance of the above-captioned Lessee do hereby certify as of September 13, 2016, as follows:

(1) Lessee did, at a meeting of the governing body of Lessee held September 6, 2016, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Agreement and the related escrow agreement on its behalf by the following named representative of Lessee:

Printed Name	Title	Signature
<i>[This signature line to be signed by person who executed the Agreement and the escrow agreement on behalf of Lessee.]</i>		

(2) The above-named representative of Lessee held at the time of such authorization and holds at the present time the office designated above and the signature set forth opposite his or her name is the true and correct specimen of his or her genuine signature.

(3) At the meeting described in (1) above, the representative of Lessee named in (1) above and the officers or employees of Lessee from time to time holding the offices or titles set forth below were designated as authorized representatives of Lessee for the Agreement and the escrow agreement (any of them acting alone), and each of the persons listed below is the current holder of the office or title indicated and the signature set forth opposite name of each of them is the true and correct specimen of his or her genuine signature:

<u>Title</u>	<u>Printed Name</u>	<u>Signature</u>

(4) The meeting of the governing body of Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval and that the action approving the Agreement and authorizing the execution thereof has not been altered or rescinded. Attached hereto as **Exhibit A** is a true and correct copy of the ordinance, resolution or other documents constituting such official action.

(5) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

(6) All insurance required in accordance with the Agreement is currently maintained by Lessee.

(7) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the interest of Lessor or its assigns, as the case may be, in the Equipment.

(8) The Equipment has not been the subject of a referendum that failed to receive the approval of the voters of Lessee within the preceding four years.

(9) Since June 30, 2015 (date of Lessee's last audited financial statements), Lessee has not entered into any direct or contingent bond debt, lease, installment purchase or loan obligation, other than those listed on **Exhibit B** attached hereto.

(10) Lessee initial here to confirm that the following provision IS applicable: _____:

Lessee initial here to confirm that the following provision IS NOT applicable: _____:

Lessee hereby designates the Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the current calendar year is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including the Agreement but excluding private activity bonds other than qualified 501(c)(3) bonds) during the current calendar year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor that the designation of the Agreement as a "qualified tax-exempt obligation" will not be adversely affected.

(11) The correct billing address for Rental Payments is as follows:

City of Avalon, California
P.O. Box 707
Avalon, CA 90704
Attention: Finance Director

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the governing body of Lessee the day and year first above written.

By: _____
Name: _____
Title: _____

Signed: _____

My commission expires: _____

(NOTARY SEAL)

**EXHIBIT A TO
LESSEE'S CLOSING CERTIFICATE**

**COPY OF AUTHORIZATION DOCUMENT
(per Section 4)**

(Please attach. Attached is a form of resolution for adoption by governing body, if no resolution previously adopted.)

RESOLUTION

WHEREAS, the City of Avalon, California (the "Lessee") is a political subdivision duly organized under the constitution and laws of the State of California; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition and installation of a synthetic multi-purpose field at Joe Machado Field (the "Equipment"); and

WHEREAS, it is necessary and desirable and in the best interest of the Lessee, as lessee, to enter into an Equipment Lease Purchase Agreement (the "Agreement") with First Security Finance, Inc., as lessor (the "Lessor"), for the purposes described therein, including the leasing of the Equipment;

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF THE CITY OF AVALON, CALIFORNIA, AS FOLLOWS:

Section 1. The Agreement, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the _____ of the Lessee is hereby authorized to execute and deliver the Agreement on behalf of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 2. The Escrow Agreement (the "Escrow Agreement"), among the Lessee, the Lessor and the escrow agent named therein, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the Escrow Agreement is hereby authorized to be executed and delivered on behalf of the Lessee by a duly authorized officer of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 3. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Agreement and the Escrow Agreement.

Section 4. This Resolution shall take effect and be in full force immediately after its adoption by the governing body of the Lessee.

PASSED AND ADOPTED by the governing body of the City of Avalon, California, this 6th day of September, 2016.

CITY OF AVALON, CALIFORNIA

By: _____
Name: _____
Title: _____

**EXHIBIT B TO
LESSEE'S CLOSING CERTIFICATE**

**LIST OF OUTSTANDING OBLIGATIONS SINCE JUNE 30, 2015
(DATE OF LESSEE'S LAST AUDITED FINANCIAL STATEMENTS)
(per Section 9)**

Please list all direct or contingent bond debt, lease, installment purchase or loan obligations (including estimated outstanding principal amount) that Lessee has entered into since June 30, 2015. If this statement is not applicable, please state "None."

ESSENTIAL USE CERTIFICATE

September 13, 2016

First Security Finance, Inc.
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

Re: Equipment Lease Purchase Agreement dated as of September 13, 2016, between the City of Avalon, California, as lessee ("Lessee"), and First Security Finance, Inc., as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

I, _____, a duly elected, appointed, or designated representative of the City of Avalon, California ("Lessee"), am qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Agreement:

1. *What is the specific use of the Equipment?*

2. *What increased capabilities will the Equipment provide?*

3. *Why is the Equipment essential to your ability to deliver governmental services?*

4. *Does the Equipment replace existing equipment?
(If so, please explain why you are replacing the existing equipment)*

5. *Why did you choose this specific Equipment?*

6. *For how many years do you expect to utilize the Equipment?*

7. *What revenue source will be utilized to make Rental Payments due under the Agreement?*

Very truly yours,

CITY OF AVALON, CALIFORNIA

By: _____
Name: _____
Title: _____

[OPINION OF LESSEE COUNSEL—PLEASE FURNISH ON ATTORNEY'S LETTERHEAD]

September 13, 2016

First Security Finance, Inc.
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

Re: Equipment Lease Purchase Agreement dated as of September 13, 2016, between the City of Avalon, California, as lessee ("Lessee"), and First Security Finance, Inc., as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

As legal counsel to Lessee, I have examined (a) an executed counterpart of the Agreement, which, among other things, provides for the lease by Lessee from Lessor of the Equipment, (b) an executed counterpart of the Escrow Agreement, dated as of September 13, 2016 (the "Escrow Agreement"), among Lessor, Lessee and TMI Trust Company, as Escrow Agent, (c) an executed copy of the ordinance or resolution of Lessee which, among other things, authorizes Lessee to execute the Agreement and the Escrow Agreement, and (d) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of California, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.

2. Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Agreement and the Escrow Agreement and to perform its obligations under the Agreement and the Escrow Agreement.

3. The Agreement, the Escrow Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Agreement and the Escrow Agreement are valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval and execution of the Agreement and the Escrow Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws.

5. To our actual knowledge after due inquiry, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement and the Escrow Agreement or the security interest of Lessor or its assigns, as the case may be, in the Equipment.

[**6. The Equipment to be leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.**] [To be discussed with COPF.]

7. The authorization, execution, delivery and performance of the Agreement and the Escrow Agreement by Lessee do not require submission to, approval of, or other action by any governmental authority or agency which action has not been taken and is final and non-appealable.

All capitalized terms herein will have the same meanings as in the Agreement. Lessor, its successors and assigns and any counsel rendering an opinion on the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation are entitled to rely on this opinion.

Very truly yours,

8038-G QUESTIONNAIRE FOR COMPLETION BY LESSEE

(Lessor Counsel will prepare and file Form 8038-G with IRS after receiving this completed and signed questionnaire.)

Name of Lessee: City of Avalon, California
Address of Lessee: 410 Avalon Canyon Road, Avalon, CA 90704
Contact Person: Robert Mescher, Finance Director
Telephone number: (310) 510-0220, Ext. 170
Email address: rmescher@cityofavalon.com
Lessee's FEIN: 95-6000669

GENERAL

The Form 8038-G (the form used by Lessees to report the issuance of a tax-exempt obligation) asks specific questions about written procedures to: (1) monitor private use of assets financed with proceeds of a tax-exempt obligation and, as necessary, to take remedial actions to correct any violations of federal tax restrictions on the use of financed assets; and (2) monitor the yield on the investment of gross proceeds of tax-exempt obligations and, as necessary, make payments of arbitrage rebate earned to the United States. In addition, the Form 8038-G asks Lessees to report whether any proceeds will be used to reimburse the Lessee for an expenditure paid prior to issuance. This questionnaire is designed to obtain the information necessary to complete Form 8038-G upon execution and delivery of the Lease.

At this time, the consequences of not having adopted written procedures to monitor private use of financed assets and yield on the investment of gross proceeds of tax-exempt obligations are unknown. Further information is available at <http://www.gilmorebell.com> under the "Continuing Compliance" header. If you have any questions, please consult your regular bond or legal counsel.

Part 1 - Written Tax Compliance Procedures

Note: If either of these questions is not answered, we will assume the Lessee has not adopted the described procedures.

1. Has the Lessee established written procedures designed to monitor compliance with federal tax restrictions for the term of the lease? Among other matters, the written procedures should identify a particular individual within Lessee's organization to monitor compliance with the federal tax requirements related to use of the financed assets and describe actions to be taken in the event failure to comply with federal tax restrictions is contemplated or discovered.
Yes ___ No ___ If Yes, please attach a copy.
2. Has the Lessee established written procedures to monitor the yield on the investment of proceeds of the Lease on deposit in an escrow account or similar fund prior to being spent and to ensure that any positive arbitrage rebate earned is paid to the United States?
Yes ___ No ___ If Yes, please attach a copy.

Part 2 - Reimbursement of Prior Expenditures

1. As of the funding date, were any of the proceeds of the Lease used to reimburse Lessee for expenditures paid to acquire the financed assets prior to the funding date of the Lease? **Yes ___ No ___** *If yes, please attach a spreadsheet listing the expenditure(s) together with the date paid, vendor paid and purpose of the expenditure or other proof of the expenditure(s) containing this information (i.e. invoices, receipts, cancelled checks).*

Items 2 and 3 need to be completed ONLY if the answer to item 1 above is YES.

2. Please attach a copy of Lessee's resolution of intent to finance the financed assets, which includes date of adoption.
3. What is the amount of proceeds of the Lease reimbursed to Lessee? \$ _____

CITY OF AVALON, CALIFORNIA

BY: _____
NAME: _____
TITLE: _____
DATE: _____

- INSURANCE CERTIFICATES RESPECTING PROPERTY, LIABILITY AND 24-MONTH RENTAL INTERRUPTION INSURANCE, RESPECTING THE EQUIPMENT WITH THE FOLLOWING PARTY SHOWN AS LOSS PAYEE AND ADDITIONAL INSURED:

First Security Finance, Inc. and its successors and assigns
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

[To be provided by Lessee before funds are withdrawn from the Escrow Fund for the Equipment.]

NOTICE OF ASSIGNMENT

September 13, 2016

City of Avalon, California
410 Avalon Canyon Road
Avalon, California 90704

Re: Equipment Lease Purchase Agreement dated as of September 13, 2016, between the City of Avalon, California, as lessee ("Lessee"), and First Security Finance, Inc., as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

Please be advised that the undersigned Lessor has assigned all of its right, title and interest in, to and under the Agreement, the Equipment leased thereunder, and the right to receive Rental Payments thereunder and the payment of the Purchase Price thereunder to Capital One Public Funding, LLC, a New York limited liability company ("Assignee"), whose mailing address is 275 Broadhollow Road, 4th Floor, Melville, NY 11747, and whose tax identification number is 11-2209667.

All Rental Payments and payment of the Purchase Price due under the Agreement should be made to the Assignee at the address below or as otherwise instructed by Assignee:

CAPITAL ONE PUBLIC FUNDING, LLC
275 BROADHOLLOW ROAD, 4TH FLOOR
MELVILLE, NY 11747

Lessee acknowledges that Assignee is acting solely as Assignee for its own loan account and not as a fiduciary for Lessee or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of Lessee (including to any financial advisor or any placement agent engaged by Lessee) with respect to the structuring, issuance, sale or delivery of the Agreement. Lessee acknowledges that Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Lessee with respect to the transactions relating to the structuring, issuance, sale or delivery of the Agreement and the discussions, undertakings and procedures leading thereto. Each of Lessee, its financial advisor, if any, and its placement agent, if any, has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the Agreement from its own financial, legal, tax and other advisors (and not from Lessor, Assignee or Assignee's affiliates) to the extent that Lessee, its financial advisor, if any, or its placement agent, if any, desires, should or needs to obtain such advice. Assignee expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to Lessee's financial advisor, if any, or placement agent, if any, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to Lessee's financial advisor, if any, or placement agent, if any, with respect to any such matters. Lessee acknowledges that the transaction between Lessee and Lessor is an arm's length commercial transaction. Assignee is acting and has acted solely as a principal and for its own interest, and Assignee has not made recommendations to Lessee with respect to the transaction relating to the Agreement.

[The remainder of this page left blank intentionally.]

Please acknowledge your receipt of this notice and your agreement to make payments due under the Agreement to Assignee by the signature of a duly authorized officer in the space provided on the enclosed counterpart of this letter and return it to us at the address set forth below.

Sincerely,

FIRST SECURITY FINANCE, INC.
LESSOR

By: _____

Name: _____

Title: _____

Address: First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

ACKNOWLEDGED AND AGREED TO:
CITY OF AVALON, CALIFORNIA

By: _____

Name: _____

Title: _____

UCC-1 FINANCING STATEMENTS

[To be prepared and filed by Lessor Counsel.]

LESSEE'S FORM W-9

[On file with Lessor.]



BETTER COMMUNITIES. BOLDER FUTURES.

ROSENOW SPEVACEK GROUP INC.
309 WEST 4TH STREET
SANTA ANA, CALIFORNIA
92701-4502

T 714 541 4585
F 714 541 1175
E INFO@WEBRSG.COM
WEBRSG.COM

July 15, 2016

Via Electronic Mail

Robert Mescher, Finance Director
CITY OF AVALON / SUCCESSOR AGENCY TO ACIA
410 Avalon Canyon Road
P.O. Box 707
Avalon, CA 90704

PROPOSAL FOR FY 2016-17 RSG CONSULTING SERVICES

Dear Mr. Mescher:

Thank you for the opportunity to present this proposal to the City of Avalon ("City"), Successor Agency to the Avalon Community Improvement Agency ("Successor Agency"), and Housing Authority of the City of Avalon ("Housing Authority") to continue providing consulting services related to the dissolution of redevelopment. RSG proposes to continue providing technical, management, and administrative services related to winding down the affairs of the former ACIA, responding to ongoing reporting requirements, conducting strategic planning and financial analyses, and providing other services as directed by staff. This proposal covers services provided throughout Fiscal Year 2016-17 as detailed in the Scope of Services below.

SCOPE OF SERVICES

TASK 1: REDEVELOPMENT DISSOLUTION SERVICES

1. Prepare the ROPS 17-18, including all necessary correspondence with DOF;
2. Prepare the Successor Agency's administrative budget for Fiscal Year 2017-18, broken down into two six-month periods;
3. Review the County Auditor-Controller's January and June 2017 RPTTF distributions to ensure accuracy;
4. Update the Successor Agency's long-term cash flow based on actual revenues and expenditures;
5. Respond to general inquiries from DOF, SCO, CAC, affecting taxing entities and other interested parties;
6. Attend meetings as requested by staff; and
7. Assist with other tasks as needed.

FISCAL HEALTH
ECONOMIC DEVELOPMENT
REAL ESTATE, HOUSING
AND HEALTHY COMMUNITIES

TASK 2: HOUSING AUTHORITY ANNUAL REPORTING & STRATEGIC PLANNING

1. Prepare the Housing Authority Annual Report due by October 1, 2016 and Housing Successor Agency Annual Report due by December 31, 2016;
2. Strategic planning and/or project formulation for future housing projects, including analysis required to program the proportional expenditure of Low and Moderate Income Housing Asset Fund (LMIHAF) monies subject to Senate Bill 341;
3. Financial support or analysis related to the management of the LMIHAF;
4. Attend meetings as requested by staff; and
5. Assist with other tasks as needed.

ESTIMATED BUDGET & FEE SCHEDULE

RSG estimates a total not-to-exceed budget of \$32,500 for the Scope of Services as outlined in the table below. This includes cost allocations for travel to meetings.

Task 1: Redevelopment Dissolution Activities	\$25,000
Task 2: Housing Authority Annual Reporting & Strategic planning	\$7,500
Total	\$32,500

Task 1 may be paid from the Successor Agency's administrative cost allowance. Task 2 may be paid from the Low and Moderate Income Housing Fund or the City's General Fund. Our services would be charged on a time-and-materials basis, in accordance with our current fee schedule below:

Principal / Director	\$ 235
Senior Associate	\$ 180
Associate	\$ 160
Senior Analyst	\$ 135
Analyst	\$ 125
Research Assistant	\$ 110
Technician	\$ 80
Clerical	\$ 60
 Reimbursable Expenses	 Cost plus 10%

RSG does not charge clients for travel or mileage (except direct costs related to field work/surveys), parking, standard telephone/fax expenses, general postage or incidental copies. However, we do charge for messenger services, overnight shipping/express mail costs and teleconferencing services. Any third party data required may also be charged to the client, typical examples include copies of the equalized assessment roll and CoStar Market data. We also charge for copies of reports, documents, notices, and support material in excess of five (5) copies. These costs are charged back at the actual expense plus a 10% surcharge.

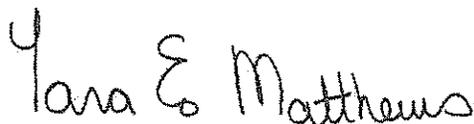
Robert Mescher
CITY OF AVALON / SUCCESSOR AGENCY TO ACIA
July 15, 2016
Page 3

RSG charges our services on a time and materials basis and the City will only be billed for time spent on these services. RSG issues monthly invoices payable upon receipt, unless otherwise agreed upon in advance. Invoices identify tasks completed to date, hours expended and the hourly rate. **Our Federal Tax ID is 95-3435849.**

This engagement would be overseen by Tara Matthews, Principal-in-Charge and managed by Suzy Kim, Senior Associate. Ms. Matthews and Ms. Kim have worked with Avalon since the dissolution of redevelopment in 2012 and are very familiar with the agency's history and needs. Additional support staff may be assigned as necessary.

We appreciate the opportunity to submit our proposal to the City of Avalon and its agencies. If this proposal is acceptable as written, please sign where indicated and return to our office at your earliest convenience. If you have any questions, please do not hesitate to contact Suzy at (714) 316-2116.

Sincerely,
RSG, INC.



Tara Matthews
Principal



Suzy Kim
Senior Associate

APPROVED AND AUTHORIZED TO PROCEED:

Signature: _____

Printed
Name: _____

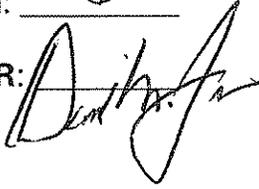
Title: _____

Date: _____

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016
ORIGINATING DEP: Administration
PREPARED BY: David Jinkens, City Manager
SUBJECT: Extension of Lease for Catalina Island Yacht Club

AGENDA ITEM: 6

CITY MANAGER: 

RECOMMENDED ACTION(S):

1. Hear staff report
2. Decide if the City Council wishes to make changes in the proposed agreement as requested by the Yacht Club leadership.
3. Direct the City Manager to have a new lease agreement prepared with the Catalina Yacht Club and authorize the approval of same under the terms approved by the City Council.

REPORT SUMMARY: On July 5, 2016 the City Council instructed the Interim City Manager to propose terms for a lease extension for the Catalina Island Yacht Club. The current lease on the subject property ends in 2020. Under the City Council offer, the following terms were proposed:

1. A new lease extension to 2023; and
2. A one ten (10) year option extending it to 2033.

The letter to the Yacht Club stated that by proposing these terms the Yacht Club and Tuna Club would be on the same lease schedule. (See attached July 8, 2016 letter from the Interim City Manager).

On July 30, 2016 Chairman Randy Barb wrote to the Mayor proposing that in addition to the terms above, the Yacht Club is requesting an additional ten (10) year extension (See attached electronic mail from Chairman Barb). In addition, the electronic mail referenced herein, the Yacht Club included a list of community donations it has made since 2010 and a list of capital improvements made to the Yacht Club since 2006 to highlight that it has been and remain a good corporate partner and community support system.

Based on the past direction in regard to this matter, the City Council could decide to make no changes to their previous terms for the Yacht Club or decide to honor their request for one additional ten year extension for the stated reasons.

GOAL ALIGNMENT: Maintain City leases promote responsible City partnerships.

FISCAL IMPACTS: There are no negative fiscal impacts to the City. A new lease will in fact be a reassurance of continued operation of the Yacht Club.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The lease will not be renewed at this time.

FOLLOW UP ACTION: Implement Council direction.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS:

1. Correspondence with Randy Barb, Catalina Island Yacht Club Chairman
2. Summary of Yacht Club File
3. Catalina Island Yacht Club Donations

David Jinkens

Subject: FW: CIYC Lease

From: Randy Barb [<mailto:rbarb@newcodistributors.com>]
Sent: Wednesday, August 10, 2016 1:39 PM
To: David Jinkens
Subject: RE: CIYC Lease

David,
This is the message I sent.

Also, the Mayor asked me how much the club spent on the shore boat last year. Not including what individuals spent to go to the green pier, the club spent \$11,747, to bring people to the Club.
Hope you're having a good week,
Randy

From: David Jinkens [<mailto:djinkens@cityofavalon.com>]
Sent: Saturday, July 30, 2016 12:07 PM
To: Randy Barb
Cc: Anni Marshall; Denise Radde
Subject: RE: CIYC Lease

Chairman Barb:

Thank you for your message. It was a pleasure meeting with you.

I will ask staff for more information on the matter and understand your perspective on the unique relationship the Yacht Club has had with City government and the community. Over the years the Yacht Club has made substantial improvements to the facility and your organization should be commended in this regard.

At a time in the near future we will be bringing back to the City Council requests for lease extensions and your request will be made available to all members of the City Council.

While I am not familiar with the particulars in your case, previous management was acting on direction of the City Council when they communicated with lease holders. The City Council has of course the right to take what action they deem appropriate based on any new facts and circumstances that exist when the matter comes before them once again.

I am impressed with the amount of work the Yacht Club does for our community through its donation program.

Best wishes and regards,

David

David Jinkens, M.P.A.
City Manager
City of Avalon

From: Randy Barb [<mailto:rbarb@newcodistributors.com>]
Sent: Saturday, July 30, 2016 11:30 AM
To: Anni Marshall
Cc: David Jinkens
Subject: CIYC Lease

Mayor Marshall,

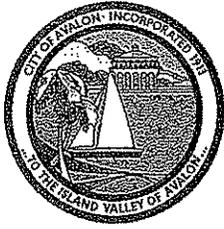
Thank you for the opportunity to meet with you and David yesterday. I walked away knowing that our city is in good hands. I think the continued partnership we have with the city in many areas will continue to grow.

While we are thankful for your offer to extend the lease 3 years plus a ten year extension, We would like to have 2 additional 10 year extensions (a total of 3 extensions). Historically the extensions have been 25 years or more. As you know, there are 200 memberships in the club. That represents nearly 500 people (2 people plus family per membership). During the summer half of us are here most weeks and almost all on the big weekends. We all look at Avalon as our home. We enjoy being part of the city, churches and charities on the island. While we own over 80 moorings and many houses in town, and employ 20 people, one of the key factors that makes us feel close to the city is our club and the building we love. We are hopeful that you can agree with us on the term of the lease.

The only other minor issue is the cpi on the club maintenance. As you know each year we spend from \$30,000 to several hundred thousand on the building. The lease requires the club to keep the property in good condition at all times. I'm not sure the dollar amount spent is as important as making sure it is in good shape whatever the cost.

I understand that Tuesday's meeting is too soon to get back on the agenda. Will we be able to get back on later this month?

Thanks again for your time and help with this,
Randy Barb
Chairman
CIYC



City of Avalon

Santa Catalina Island

July 8, 2016

Via Electronic Mail Only

Chairman Randy Barb
Catalina Island Yacht Club
PO Box
Avalon, CA 90704

Dear Randy,

The City Council met in Closed Session last Tuesday, July 5, 2016 to discuss the terms of your lease and the CIYC's request. I am reporting back the Council's decision. Staff is being instructed to issue a new lease extending it by three years to 2023 with a one (1) ten year option, expiring September 30, 2033. This puts CIYC in parity with the Tuna Club with regard to the length of the lease. Please note that additional wording will be added to address a CPI on contribution amounts and maintenance, as well as your rent, which is already included.

I appreciate your patience on this Randy. I know it has been an extremely long process. The City has a great appreciation for your Club and we look forward to a continued relationship.

Sincerely,

Denise A. Radde
Interim City Manger/City Clerk

**Administration/
Public Works**
P.O. Box 707
Avalon, CA 90704
310 510-0220
Fax 310 510-0901

Finance
P.O. Box 707
Avalon, CA 90704
310 510-0220
Fax 310 510-0765

Harbor Department
P.O. Box 1085
Avalon, CA 90704
310 510-0535
Fax 310 510-2640

Fire Department
P.O. Box 707
Avalon, CA 90704
310 510-0203
Fax 310 510-0104

**Recreation
Department**
P.O. Box 707
Avalon, CA 90704
310 510-0220
Fax 310 510-9528

**Planning/Building
Capital Improvements**
P.O. Box 707
Avalon, CA 90704
310 510-0220
Fax 310 510-2608

Summary of Yacht Club File
Exhibit C

1946 - Initial lease
1953 - Extension
1974 - Extension
1980 – Extension (We have copy)

1995 Lease –

- Initial term of 15 years (expires Sept 30, 2010).
- Option to extend for 10 years

2003

03/08 Letter to Sullivan from Melville asking for similar terms as Tuna Club received (rent vs. charity)

2006

April 4 – Agenda item to change Yacht Club base rent to \$10k and \$26k charitable
**** No renegotiations of lease “but rather adjusting the method of payment”

2008

Letter from Volberdin, Chairman, ‘exercising option to extend...”

2014

Yacht Club reached out to City to change terms of lease and extend.

*******REQUEST:**

- 1) New lease will start when current lease expires 9/30/2020 - 20 year lease with a 10 year option (2050)
- 2) Annual base rent of \$27,500
- 3) Annual charitable contribution of \$26,000
- 4) Eliminate annual maintenance of \$30,000- go back to original lease
(Section 8.1- Tenant’s obligation to maintain and repair premise)

Catalina Island Yacht club donations Since 2010				
	CIYC	Billfish	CIYC	Mooring
	Foundation	Tournament	Auxiliary	Owners
AHS BASKETBALL, BASEBALL, FOOTBALL	\$ 600.00			
AHS CHEER SQUAD	\$ 2,000.00			
AHS FOOTBALL HELMET SENSORS	\$ 2,000.00			
AHS GIRLS BASKETBALL, BASEBALL, FOOTBALL	\$ 600.00			
AVALON BOOSTERS CLUB	\$ 1,900.00			
AVALON FIRE	\$ 23,000.00		\$ 1,750.00	
AVALON KIDS BASEBALL	\$ 750.00	\$ 11,850.00		
AVALON MUSEUM	\$ 1,000.00			
AVALON PONY LEAGUE	\$ 250.00			
AVALON ROTARY	\$ 3,000.00			
AVALON SCHOOL	\$ 450.00			
AVALON SEARCH & RESCUE	\$ 1,000.00		\$ 5,500.00	
BOY SCOUTS	\$ 450.00			
CATALINA ISLAND CONSERVANCY	\$ 30,600.00			
CATALINA ISLAND MED CENTER	\$ 23,950.00	\$ 49,800.00		
CATALINA ISLAND MED CENTER AUXILIARY			\$ 2,000.00	
CATALINA ISLAND SEARCH & RESCUE		\$ 48,700.00		\$ 24,600.00
CATALINA PONY CLUB	\$ 200.00			
CHOICES	\$ 700.00		\$ 3,750.00	
CITY OF AVALON TREMONT HALL			\$ 750.00	
CITY OF AVALON	\$ 17,100.00			
CUB SCOUTS	\$ 450.00			
GIRL SCOUTS	\$ 450.00			
HAMONDS BICULTURAL GROUP	\$ 150.00			
INTERACT CLUB	\$ 200.00			
ISLANDS CLUB	\$ 150.00			
KIDS VENTURE	\$ 2,000.00	\$ 12,200.00	\$ 2,000.00	
KIDS AT PLAY			\$ 2,000.00	
LACROSS	\$ 200.00			
LITTLE LEAGUE BASEBALL	\$ 200.00			\$ 24,600.00
MARINE ANIMAL RESCUE			\$ 2,500.00	
MUSIC WITH SARA	\$ 150.00			
OCEAN INSTITUTE			\$ 100.00	
P.L.A.Y.	\$ 2,700.00			
PLAY PRESCHOOL LEARNING AVALON YOUTH	\$ 500.00			
SCHOLARSHIPS			\$ 6,000.00	
ST CATHERINE'S YOUTH GROUP	\$ 550.00			
y.a.I-YOUTH ACTIVITIES LEAGUE	\$ 250.00			
	\$ 117,500.00	\$ 122,550.00	\$ 26,350.00	\$ 49,200.00
TOTAL DONATIONS	\$ 315,600.00			

Catalina Island Yacht Club			9/14/2015
	Capital		Repair &
	Improvements		Maintenance
2006	\$ 45,639.00		\$ 30,000.00
2007	\$ 212,778.00	New pilings and structural supports 2007 - 2011	\$ 30,000.00
2008	\$ 91,189.00		\$ 30,000.00
2009	\$ 268,539.00		\$ 30,000.00
2010	\$ 511,744.00		\$ 30,000.00
2011	\$ 146,321.00		\$ 30,000.00
2012	\$ 58,691.00		\$ 30,000.00
2013	\$ 89,974.00		\$ 30,000.00
2014	\$ 51,185.00		\$ 30,000.00
2015	\$ 102,135.00		\$ 30,000.00
Total	\$ 1,578,195.00		
			(Annual budget is \$30,000)
10 year total expenditures		\$ 1,878,195.00	

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016
ORIGINATING DEP: Administration
PREPARED BY: David Jinkens, City Manager
SUBJECT: Item of Discussion: Vacation Rentals and Transfers

AGENDA ITEM: 7

CITY MANAGER: 

RECOMMENDED ACTION(S): Review and discuss whether the City of Avalon should place a cap on the number of vacation rentals and whether transfer of vacation rental rights should occur with sale of the property to a new owner. This is an item of discussion only.

REPORT SUMMARY: Council Member Cassidy is asking that the City Council have an open discussion about the wisdom of placing a cap on the number of vacation rentals in town and whether the transfer of vacation rental rights to a new purchaser should be automatic with the sale. The issue arises out of community concern with the lack of affordable housing and the prospect that with the water shortage, building new affordable housing in the near term may not occur.

There is no doubt that there is a shortage of affordable housing in Avalon. To the extent that the existing housing supply increases the number of vacation rental units, it is arguable that this action not only takes housing stock off of the market for single family use, but it also drives up the price of existing housing. The Finance Director reports that there are approximately 350 vacation rental properties already licensed with the City. Almost all of them are single units. The City generates \$1.4 million in TOT annually from vacation rentals. The City charges an annual \$38 business license fee per property. Another question that arises is whether there should be a minimum TOT fee per unit per annum.

Please see the attached history of City interest in this topic prepared by the Planning Director.

GOAL ALIGNMENT: Actions that promote the availability of affordable housing.

FISCAL IMPACTS: A moratorium per se that did not change the number of existing units would be revenue neutral. There would not be expected to be a rise in TOT from this source if a moratorium and cap is imposed. Should the City Council direct staff to examine the issue a more detailed fiscal report would be made.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS:

1. Chronological List of Transient Rental Review & Recent TOT data

Chronological List of Transient Rental Review
and Recent TOT data

January, 1988

City Council adopts ordinance establishing the requirement for a Conditional Use Permit for transient rental, with or without Board.

1993

The first CUP for transient rental was issued in 1993. Between 1993 and 2000, 134 CUPs are issued for transient rental and the total active transient rental units are 275.

January, 2001

City Council and Planning Commission have a joint meeting to discuss transient rentals.

February 6, 2001

City Council adopts a moratorium to restrict issuance of transient rental/CUPs to allow Planning Commission an opportunity to study issues and make recommendations

February 28 and March 28, 2001

Planning Commission held two public hearings regarding transient rentals and adopted a resolution recommending adoption of the current ordinance (including expiration dates for the CUPs)

May, 2001

City Council sends ordinance with changes back to Planning Commission.

November, 2001

City Council adopts ordinance imposing two year expiration date for CUPs for transient rental

October, 2005

Planning Commission and City Council review changes to transient rental ordinance proposed by the Housing Task Force.

December, 2005

Planning Commission reviews proposed ordinance proposed by the Housing Task Force and forwards to City Council for approval

March, 2006

City Council approved proposed changes and adopts ordinance (now without expiration dates for CUPs).

March, 2008

Two Councilmen discuss with staff possible changes to transient rental ordinance. (overlay zone and administrative permit)

March 26, 2008

Planning Commission discusses proposed changes as item of discussion.

May 6, 2008

City Council reviews proposed changes.

May 20, 2008

City Council reviews various changes and agrees to schedule on future agenda for discussion.

June, 2008

City Council reviews changes (change transient use to principally permitted use in HD zones, create administrative permit)

August, 2008

City Council reviews additional changes (define bedroom size 7 x 10, restrict vehicles in the flats, and require windows in bedrooms, minimum TOT)

September 16, 2008

City Council reviews additional information regarding limiting vehicles with transient rentals in the flats.

October 7, 2008

City Council reviews ordinance that will establish occupancy based on size of unit, address multiple use properties and sets minimum TOT per year.

October 20, 2008

2nd reading pulled from agenda

November 13, 2008

City Council reviews additional recommendations. (no to cap, yes to admin permit, no to limits in certain areas, yes to saturation, yes to vehicle limits.)

2001 – 2008

137 CUPs for transient rental are approved, Total number of active transient units is 309

February, 2009

City Council reviews changes.

April, 2009

City Council reviews changes and proposed ordinance for first reading. The changes would have created a Transient Rental License and would have eliminated the rental right being granted to the property through the CUP process which would eliminate the permit going forward with the sale of the property.

June, 2009

City Council reviews changes which require a new first reading of ordinance.

August, 2009

City Council heard an appeal of a Planning Commission decision denying a CUP for transient rental at A24 Bahia Vista and held the item over for 90 days to allow for review of the transient rental ordinance.

September 15, 2009

City Council reviews changes limited to saturation (citywide or not) and limiting of vehicles in the flats.

December, 2009

City Council/Planning Commission meeting is scheduled to discuss transient rentals. Two primary changes recommended and adopted: saturation of surrounding properties information be included in each staff report and restriction to use of vehicle as part of rental in 'flats' and Bahia Vista, Sol Vista, Canyon Terrace and Fairview Terrace.

May, 2010

City Council adopts ordinance incorporating standard conditions of approval for transient rentals into the Municipal Code: occupancy based on bedrooms and size of bedrooms, used of decks, use of vehicles, signage and 24 hr management required.

2010 to date:

No additional changes to the Municipal Code have occurred.

2011: 296 Active Transient Rental Vacation Homes as of year end 2011 TOT data.

- 87 Transient Rental CUPs approved since December, 2003
- 46 Transient Rental units may not include vehicle.

2013: Based on annual TOT, 390 transient units, average TOT per unit is \$2 831.00 for the year.

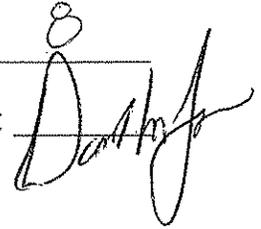
2015: Based on annual TOT, 375 transient units. 111 self managed, average TOT is \$1759 for the year, 265 commercially managed units average TOT is \$4539 for the year. 24 units paid zero TOT in 2015. 92 units paid between \$5,000 and \$9,999. 15 units paid over \$10,000

CITY OF AVALON CITY COUNCIL

MEETING DATE: September 6, 2016
ORIGINATING DEP: City Attorney and City Manager
PREPARED BY: Scott Campbell, City Attorney
SUBJECT: Discussion of Potential Growth Management Ordinance

AGENDA ITEM: _____

CITY MANAGER: _____



RECOMMENDED ACTION(S): Discuss potential options for a Growth Management Ordinance and provide direction to Staff.

REPORT SUMMARY: The City is in the midst of a historic drought, and the availability of current and future water resources affects both the current quality of life of Avalon residents and the City's ability to plan for long-term growth and development. Due to the climate and hydrology of the island, as well as its isolated location and lack of water supply alternatives, there is a limited supply of potable water for the City, and the City is highly susceptible to water shortages that impact the health, safety and welfare of its residents. The City's General Plan contains the following two goals:

- Achieve effective long-term management of water resources so that demand is in balance with efficient, sustainable supplies.
- Provide a safe and adequate water supply that effectively meets the demand for the existing and future population through water efficiency and reclamation programs.

Potable water service on the island is provided by Southern California Edison (SCE), which is regulated by the Public Utilities Commission. Under SCE's water conservation PUC tariff, when the water level in the Middle Ranch Reservoir falls below a certain number of acre feet, then there are four stages of water conservation and rationing.

The determination of whether to issue an allocation is within the discretion of SCE and is not subject to City review or approval. However, the City Council has broad authority to enact regulations that provide for the health, welfare, and safety of its residents. Under this authority, the City Council may consider adopting an ordinance that would enable the City Council to deny or condition the issuance of development permits where it determines that there are not sufficient water resources to serve the proposed new development or to protect the long-term public health and safety interests of existing City users of water.

A city may impose a moratorium on developments that result in new or expanded water service provided that the ordinance is rationally related to a legitimate local interest, and is not imposed arbitrarily or maliciously. Thus, in order to adopt such an ordinance, the City Council must establish objective criteria to support and implement any restrictions on development that result in new or expanded water service.

The most straightforward mechanism to manage growth is to adopt a City Ordinance that is consistent with the drought stages and development restrictions contained in SCE's water conservation tariff. For example, the City Council could adopt an Ordinance prohibiting all development permits requiring new or expanded water service during a Stage Two through Four drought, as established by SCE. In this case, even if SCE were to issue a water allocation pursuant to some type of exemption, the City Council could refuse to issue development permits until the specific drought conditions no longer exist and there is no longer a Stage Two or higher drought. It should be noted that SCE could issue an allocation to a party who develops a new potable water resource, and City permit restrictions may not apply in this scenario.

The effect of the ordinance discussed above is that the City could adopt regulations that expanded water service is not allowed even if SCE were to issue a water allocation despite the drought restrictions. The City Council may further consider establishing objective factors for granting a development permit during a drought stage in the event that SCE issues a water allocation. For example, the City Council may want to allow the permit if the use is for a public facility that provides a public benefit to the community as a whole (e.g., an expansion of a school or hospital facility that is needed to serve the community). Other factors may also be acceptable, but the City Council will have to establish factors that may be applied objectively. The determination of whether to grant a development permit notwithstanding the restriction should not be done on an ad hoc basis or in an arbitrary fashion but pursuant to established standards.

The City Council may also consider the establishment of factors for the termination of the growth management restriction. For example, the development of alternative available sources of potable water may relieve the drought conditions to some extent.

Lastly, the City currently does not have standards for declaring its own drought – the determination of the drought stage is made by SCE according to SCE's tariff. The City may adopt its own factors that would trigger drought stages and impose conservation measures independent of SCE standards. If the City were to adopt its own drought conservation requirements, the issuance of water allocations would still be determined by SCE. However, the City could impose additional conservation measures that it could continue to enforce. It could also impose development restrictions based on the City-established stages as opposed to relying on SCE's requirements.

GOAL ALIGNMENT: Water Conservation.

FISCAL IMPACTS: None at this time

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: Because of the current Stage Two drought level, the City is already effectively under a moratorium from new development because SCE's tariff restricts SCE from issuing any new water allocations. If SCE issues an allocation as an exception to its tariff, then the City might not have recourse to prevent the development.

FOLLOW UP ACTION: Depending on City Council direction, Staff may either provide further information or prepare a draft ordinance.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: None.

City Manager's Comments

This report is a follow-up to a discussion that was held at the City Council a few weeks ago. The essence of it is that the City Council wants to ensure that water resources in Avalon are managed properly, fairly, and in a transparent manner and that building permits are allocated to those projects the City finds are consistent with goals contained in the General Plan.

Simply stated, the City Council could require the following:

- A. No building permit will be issued for any project unless the City Council or its designee makes a finding that the allocation of water for the project by SCE is consistent with the City's adopted General Plan and water saving policies it has or may adopt in the future; and
- B. That the allocation of water for the project is done in a manner that is fair, transparent, and a high priority.
- C. The City Council or their designee may promulgate rules to implement this growth management policy.

dmj

