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**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Parks
Department No.: 052
For Agenda Of: December 1, 2009
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: N/A

TO: Board of Supervisors
FROM: Department Daniel C. Hernandez (568-2461) *DCV*
Director
Contact Info: Daniel C. Hernandez (568-2461)

SUBJECT: Agreement with Providence Landing Homeowners Association for Maintenance and Operations of Providence Landing Park

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Approve and execute agreement with the Providence Landing Homeowners Association to maintain and operate the Providence Landing Park.

Summary Text:

The Providence Landing subdivision, approved by the Board of Supervisors July 9, 2002 included the construction of a 12 acre park. The original intention was to contract with the YMCA to maintain and operate the park using funds from a Community Facilities District (CFD). The District calls for annual assessments of purchased properties in the development as the means of financing maintenance activities (currently \$672 per year).

During the period of time between the development of the park and its final completion, the Providence Landing Homeowners Association (HOA) indicated a desire to perform the maintenance and operation as method of decreasing the potential costs for these activities to the HOA members. The key results of discussions between the County and the HOA are as follows:

1. The HOA will maintain the park to County established standards paying all the costs maintenance, including utilities and trash collection
2. Park hours will be from 8 AM to sunset daily
3. The park facilities will be available to the general public

4. The HOA will ensure there is onsite staff a minimum of 30 hours per week
5. The HOA will establish programming of recreational facilities for league and non league use, charging an amount comparable with fees collected in the County
6. The HOA may subcontract the maintenance work to third parties; prevailing wages must be paid to all contract employees
7. The HOA will provide quarterly financial and maintenance and operation reports
8. The HOA will submit a proposed budget prior to the beginning of each County fiscal year for approval by the Board of Supervisors, including projected revenues from programmatic activities. The budget, in concert with CFD fund balance will serve to establish the annual CFD assessment for the coming year; the CFD will maintain a one year reserve.
9. The initial term of this agreement shall be from the effective date until July 1, 2011, provided that the Final Budget is approved by the Board of Supervisors for the 2010-2011 fiscal year. At anytime, either party can terminate this Agreement upon 90 days written notice. This Agreement may be renewed, extended or modified by mutual written agreement signed by both parties.

Background:

The Providence Landing subdivision was approved on July 9, 2002. The project consisted of approximately 141 acres with 267 single family detached homes and 61 attached affordable residential units. Included in the acreage is a 12 acre park that is to be dedicated to the County. On June 22, 2004 the Board approved the final map and approved an agreement to develop the park. The CFD was formed on January 11, 2005.

Fiscal and Facilities Impacts: N/A

Fiscal Analysis: N/A

Staffing Impacts: N/A

Special Instructions:

1. Clerk of the Board to return a fully-executed copy of the Agreement and Minute Order to the Parks Department/Administrative Office, Attn.: Sonia Thompson.

Attachments:

Attachment 1 – Operator Agreement for Providence Landing Park

Authored by:

Daniel C. Hernandez, 568-2461

cc:

John McInnes, Assistant CEO

Jeff Stone, Parks Department

Mike Ledbetter, Deputy County Counsel

John Jayasinghe, County Executive Office

OPERATOR AGREEMENT FOR PROVIDENCE LANDING PARK

THIS OPERATOR AGREEMENT FOR PROVIDENCE LANDING PARK

("Agreement") is made by and between the COUNTY OF SANTA BARBARA ("County") and the PROVIDENCE LANDING HOMEOWNERS ASSOCIATION ("Operator"), and shall be effective as of the date it has been signed by both parties. This Agreement is made with reference to the following facts:

- A. County approved the development of a residential development located in the southern portion of Vandenberg Village, County of Santa Barbara, California referred to as the Providence Landing Development, which contains a 12-acre park site ("Park").
- B. CPH Lompoc, LLC ("Developer"), as developer of the Providence Landing Development also developed the Park.
- C. Developer, The Channel Islands YMCA ("YMCA") and County entered into that certain Agreement to Maintain a Public Park, dated July 7, 2004 and subsequently amended, related to the development, maintenance and operation of the Park ("Maintenance Agreement").
- D. Exhibit B to the Maintenance Agreement is an Operator Agreement by and between YMCA and County regarding the repair, maintenance and operation of the Park.
- E. County has formed the Providence Landing Community Facilities District ("CFD"), for the purpose of collecting assessments from owners within the Providence Landing Development to fund the operation and maintenance of the Park.
- F. Operator is the homeowners association for the Providence Landing Development.
- G. County and Operator desire to enter into an agreement whereby Operator assumes responsibility for the repair, maintenance, and operation of the Park.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Operator's Obligation to Maintain and Operate the Park.** Operator shall have the overall responsibility for the maintenance, repair, and operation of the Park and all improvements thereon. Operator shall be responsible for the daily maintenance and ongoing upkeep of the Park and the facilities within the Park, including the maintenance of the athletic fields and courts, irrigation equipment, landscaping, sidewalks and paths, security

lighting, concession stand, office, bathrooms and parking lots.

- A. Standard of Operation, Responsibility for Park. Operator shall maintain the Park to standards adopted by the County as detailed in Exhibit "A" and shall ensure that maintenance is performed to such standards as necessary to keep the Park in an attractive, clean, neat, sanitary, useful and safe condition. The parties acknowledge and hereby agree that all work completed at the Park by Operator shall be done in a competent and workmanlike manner.
- B. Park Hours. Unless otherwise agreed to by the County Director of Parks, the Park shall be open to the general public daily from 8 a.m. to sunset; provided however, the Park may be closed for periodic maintenance and for special events.
- C. Use of Park. Operator shall ensure that Park facilities are available to all members of the general public regardless of whether or not they reside in the Providence Landing Development or are members of the Providence Landing Home Owners Association.
- D. Staffing. Operator shall provide adequate staff to oversee the Park's day-to-day operations, including scheduling of programs and special events and managing daily maintenance of the Park. Staff shall be onsite an average of 30 hours per week. Neither Operator nor its staff are responsible for providing security services at the Park.
- E. Programming. Operator shall be responsible for managing the scheduling, organizing and administering of group recreational leagues and non-league use of athletic fields and other Park facilities. Operator shall be responsible for instituting and enforcing a reservation system for use of the athletic fields and group picnic areas, and may collect reasonable fees for such uses; provided that such fees are no more than fees collected at similar parks in the County of Santa Barbara for similar uses.
- F. Compliance with Conditions of Approval. The Operator shall ensure the Park complies with the applicable conditions of approval adopted as part of the Tract Map and the Conditional Use Permit for the Park ("Park Conditions"), which Park Conditions are attached hereto as Exhibit "B".
- G. Utilities. The Operator shall be responsible for all utilities used at the Park, collection of trash and recycling at the Park, and annual weed abatement services. All projected costs for these services will be included in the Final Budget, as provided for in paragraph 2.C. below.
- H. Subcontracting. Subject to review and approval by the County Director of Parks, or his or her designee, the Operator may subcontract some or all of its operational responsibilities to third parties. Operator shall require any subcontractor to maintain insurances at the same amounts and under the same

terms and conditions as are set forth in Section 4 of this Agreement, or such other insurances as may be acceptable to the County. It is mandatory that the Operator and/or any subcontractor comply with all laws related to payment of prevailing wage rates. Information regarding prevailing wages and their applicability can be determined using information from the California Department of Industrial Relations (<http://www.dir.ca.gov/dlsr/pwd/>).

- I. Reports and Accounting. Operator shall prepare and deliver to County each quarter for the term of this Agreement a written report describing the operation, repair, and maintenance activities completed by Operator ("Quarterly Report"). The Quarterly Report shall include a balance sheet identifying the income and expenditures of the Operator for the Park. Operator shall keep and maintain throughout the term of this Agreement accounting records in accordance with standard accounting principles, and County shall have the right to review these records during normal business hours and upon at least four-eighty (48) hours prior written notice.

2. County's Obligations Related to the Park. County shall be responsible for the following:

- A. Collection and Payment of CFD Funds. For so long as the CFD remains in place, County shall collect assessments from the CFD and shall pay to Operator the amount authorized by the Final Budget, as defined below, for each year of this Agreement ("CFD Funds"). County shall pay to Operator the CFD Funds in two yearly installments: January 15th and July 15th. If the CFD ceases to exist for any reason during the term of this Agreement or any extension thereof, County shall pay to Operator all monies owed for the maintenance, operation, and upkeep of the Park. If at anytime during the term of this Agreement, County does not deliver to Operator funds necessary to meet the Final Budget or fails to make any installment payment to Operator, Operator shall have the right to immediately terminate this Agreement.
- B. Operating Budget. No later than March 1st of each year for the term of this Agreement, Operator shall provide to County a proposed operating budget for the following year ("Proposed Budget"). The Proposed Budget will set forth the total estimated cost for oversight, management, regular maintenance, repair, insurance, and operation of the Park, as well as a reasonable reserve budget held by the County in the Reserve Account and the estimated cost of any anticipated extraordinary or one time expenses for major repairs or improvements to the Park. Beginning July 1, 2010 the Proposed Budget shall also include the estimated income generated by the Operator through use fees collected at the Park. The County shall review the Proposed Budget within forty five (45) days of receipt and shall either approve the Proposed Budget or return the Proposed Budget to Operator with recommended revisions. If County approves the Proposed Budget, it shall become the budget for the following year ("Final Budget") beginning July 1. If County returns the Proposed Budget with

recommended revisions, Operator shall review said revisions and shall either accept or reject said revisions. If Operator accepts said revisions, the Proposed Budget with said revisions shall become the Final Budget subject to approval by the Board of Supervisors. If Operator rejects said revisions, Operator and County shall meet within ten (10) days and shall make reasonable best efforts to resolve their dispute regarding the Proposed Budget. Upon mutual agreement by the parties, the Proposed Budget with any mutually acceptable revisions shall become the Final Budget subject to approval by the Board of Supervisors.

- C. Major Additions or Repairs Funded Outside the Final Budget. Subject to the terms and conditions set forth below, Operator shall have the right to request additional funds retained by the County in the Park Account for extraordinary expenses related to the Park and any shortfall in funding the Final Budget during the term of this Agreement. For purposes of this section, "extraordinary expenses" shall mean expenses or costs incurred or to be incurred by Operator related to the operation, maintenance or improvement of the Park that are not anticipated in the Final Budget for any given year or that constitute a major addition, improvement or repair to the Park, including without limitation, replacement of structures, repair or replacement of improvements or property damaged by vandalism or stolen, irrigation systems, sod or major portions of landscaping; construction of new structures, playing fields or landscaped areas; or re-pavement of parking areas. Any request for additional funds from the Park Account shall be in writing and shall provide a detailed description of the work to be completed and an estimated cost for such work, or the estimated shortfall of funds from the Final Budget ("Request for Additional Funds"). The County shall promptly review any Request for Additional Funds. Operator acknowledges that any Request for Additional Funds is subject to approval of the Director of Parks and Recreation and/or the County Board of Supervisors. In the event Operator's Request for Additional Funds is denied by the County, Operator shall have no obligation or responsibility to make the addition, improvement or repair set forth in the request for funds.

3. Term. The initial term of this agreement shall be from the effective date until July 1, 2011, provided that the Final Budget is approved by the Board of Supervisors for the 2010-2011 fiscal year. At anytime, either party can terminate this Agreement upon 90 days written notice. This Agreement may be renewed, extended or modified by mutual written agreement signed by both parties

4. Insurance. Operator recognizes and accepts that the County is self-insured and may purchase commercial insurance to cover its exposure hereunder, in whole or in part. The Operator will provide County a certificate of insurance naming County as an additional insured on its General and Automobile Liability Insurance policy during the term of this Agreement.

Operator shall procure the following required insurance coverage at its sole cost and expense. All insurance coverage is to be placed with insurers having a Best's rating of no less than A: VII unless otherwise approved by the County. Such insurance coverage shall be maintained during

the term of this Agreement. Failure to comply with the insurance requirements shall place the Operator in default. Upon request, Operator shall provide a certified copy of any insurance policy to the County within ten (10) working days.

- A. Workers' Compensation Insurance: Statutory Workers' Compensation and Employer's Liability Insurance shall cover all staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the County. In the event Operator is or becomes self-insured, it shall furnish a copy of the Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California.
- B. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage, and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations under the control of Operator and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by Operator in the indemnity and hold harmless provisions of this Agreement. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of Operator pursuant to the activities hereunder. Operator shall require all subcontractors to furnish separate certificates and additional insured endorsements to meet the standards of these provisions by each subcontractor. County shall be named as "additional insured" on any policy. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less the \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Any deductible or Self-Insured Retention (SIR) over \$10,000.00 requires prior approval by the County.

Said policy or policies shall include a severability of interest clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if either party has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only. "

If the policy providing liability coverage is on a "claims-made" form, Operator is required to maintain such coverage for three (3) years following termination or expiration of this Agreement. Said policy or policies shall provide that the County shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

Operator shall provide County with certificate(s) of insurance documenting the required insurance as specified above prior to the effective date of this Agreement. County shall maintain current certificate(s) of insurance at all times as a condition

precedent to any payment to Operator under this Agreement. Approval of insurance by County or acceptance of the certificate of insurance by County shall not relieve or decrease the extent to which Operator may be held responsible for payment of damages resulting from Operator's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of County's rights to insurance coverage hereunder.

5. **Indemnification.**

- A. **Operator's Indemnification of County.** Operator shall indemnify, defend and hold County, and County's agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement of Operator, and its officers, agents and employees, including performing or authorizing the performance of, or in failing to perform or authorize the performance of any work, services or functions provided for, referred to in or in any way connected with any work, services or functions to be performed under this Agreement.
- B. **County's Indemnification of Operator.** County shall indemnify, defend and hold Operator and its agents, officers, members, and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement of County, and County's officers, agents and employees.
- C. **Notification.** Each party shall give the other prompt notification when it first learns of an incident or occurrence covered, or likely to be covered, under the terms of this Section 5, as well as prompt notification if a claim is made or suit is brought against a party based on an incident or occurrence covered, or likely to be covered, by the terms hereof.
- D. **Continuing Obligation.** To the extent that Operator has agreed to indemnify, defend and hold harmless County, its officers, agents and employees under this Agreement, and County has agreed to indemnify, defend and hold harmless Operator, its officers, agents and employees under this Agreement, said obligations shall continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during this Agreement.

6. **Breach and Remedies for Breach.** All provisions of the Agreement are considered material and a violation of any provision by either party shall constitute a breach. If either party breaches this Agreement or any portion thereof, the other party shall give written notice specifying the alleged breach. The breaching party shall remedy the breach within fifteen (15) days of

receiving notice, or if the breach cannot be remedied within fifteen (15) days, the breaching party shall commence to remedy the breach within fifteen (15) days and shall diligently pursue to completion said remedy. Notwithstanding the foregoing, if the breach constitutes an immediate or imminent threat to the health and safety of the public, then the breaching party shall remedy the breach within twenty four (24) hours, or if the breach cannot be remedied within twenty four (24) hours, the breaching party shall commence to remedy the breach within twenty four (24) hours and shall diligently pursue to completion said remedy. If the breaching party fails to remedy the breach within said time periods, the other party shall have the right to immediately terminate this Agreement. This section shall not limit any additional remedies available to either party under law.

7. **General Provisions.**

- A. **No Agency.** Except as otherwise specified herein Operator shall not be deemed to be County's agent and County shall not be deemed to be Operator's agent.
- B. **Notices.** Any notice, approval, or consent required under this Agreement shall be given to the respective party in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To Operator: Providence Landing Homeowners Association
c/o Good Management Co.
1 N. Calle Cesar Chavez, #230
Santa Barbara, CA 93103

To County: Santa Barbara County Parks
610 Mission Canyon Road
Santa Barbara, CA 93105

Or such other address or to such other person that the parties may from time to time designate in writing. Notices, consents and approvals sent pursuant to this section shall be deemed received upon the earlier of (a) actual receipt by the recipient or (b) three (3) business days following their deposit in the U.S. Mail.

- C. **No Other Agreements.** This Agreement supersedes all other agreements, whether oral or written, between the parties with regard to the subject matter of this Agreement. Any amendment or modification of this Agreement shall be in writing and executed by both parties.
- D. **Assignment.** Operator shall not assign this Agreement or any portion thereof without the prior written consent of County, which consent shall not be unreasonably conditioned or withheld. Notwithstanding the foregoing, Operator may assign this Agreement to any organization, entity, or corporation in which Operator owns or controls a majority interest.

- E. Partial Invalidity. If any term of this Agreement or application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than to those which have been held to be invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- F. Attorneys' Fees. If a party to this Agreement files an action to enforce or interpret any provision of this Agreement, or for any breach hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs as determined by the court, in addition to any other relief that may be granted.
- G. Effective Date: Payment to CPH. This Agreement shall become effective upon the date it has been executed by both parties. Notwithstanding the foregoing, the parties acknowledge that CPH has funded the maintenance of the Park since July 1, 2009 and shall be reimbursed for its expenses from that date to the effective date of this Agreement. Said reimbursement shall be paid from the CFD funds collected by the County.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date last written below.

PROVIDENCE LANDING HOMEOWNERS
ASSOCIATION
A California nonprofit mutual benefit
corporation

By: [Signature] 10-14-09
HOA President Date
Dennis Baker, Pres.
(Name and Title)
(Signature must be notarized; attach jurat)

By: [Signature] 10/19/09
~~HOA Secretary~~ Date
Angela Tripp, HOA Board Member
(Name and Title)
(Signature must be notarized; attach jurat)

SANTA BARBARA COUNTY BOARD OF
SUPERVISORS

ATTEST:
MICHAEL F. BROWN

By: _____
Chair
Board of Supervisors

By: _____
Clerk of the Board

(Signatures continued on next page)

APPROVED:

By: Daniel C. Hernandez
Director, Santa Barbara County Parks
Department

APPROVED AS TO FORM:
DENNIS A. MARSHALL, COUNTY
COUNSEL

By: [Signature]
Deputy

SANTA BARBARA COUNTY RISK
MANAGEMENT

By: [Signature]

SANTA BARBARA COUNTY AUDITOR-
CONTROLLER

By: [Signature]

ACKNOWLEDGEMENT

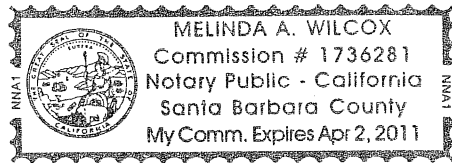
State of California }
County of Santa Barbara }

On October 14, 2009, before me, Melinda A Wilcox, a Notary Public, personally appeared Dennis Baker, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Melinda A. Wilcox (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara }

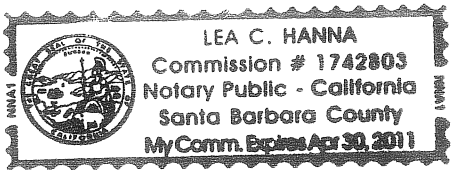
On October 19, 2009 before me, Lea C. Hanna
Date Here Insert Name and Title of the Officer

personally appeared Angela Tripp Rowe
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.
 Signature Lea C. Hanna
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

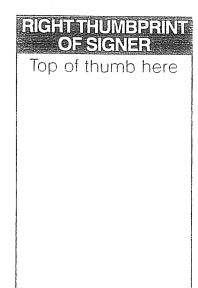
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

