



Meeting Date: 01 / 23 / 07

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Alan Holmberg Agenda Item No. I-7
 Reviewed By: City Manager [Signature] Holmberg City Attorney [Signature] Finance SW Public Works Director [Signature]

DATE: January 17, 2007

TO: City Council

FROM: Anthony Emmert, Water Resources Manager [Signature]

SUBJECT: License to Encroach Upon Easement, Blending Station No. 3, 1700 Solar Drive, Oxnard, California

RECOMMENDATION

That City Council approve and authorize the Mayor to execute a License Agreement granting to the City a right to encroach upon an easement in favor of Flag Properties ("Flag") across property located at 1700 Solar Drive, Oxnard, California, used by the City for operations at its Blending Station No. 3.

DISCUSSION

On or about November 7, 2003, the City purchased real property located at 1700 Solar Drive, Oxnard, California for use as a water blending station. Flag then owned, and still owns, an easement for right-of-way purposes, providing Flag with access to Flag's property adjacent to Blending Station No. 3. The City's operations at Blending Station No. 3 require the use of property which is in Flag's easement.

The attached License Agreement will allow the City to encroach upon Flag's easement and reduce the scope of Flag's use. Flag and the City will share access that accommodates both parties' needs. The City will maintain the access area. The City will also cooperate with Flag with respect to providing signage for Flag's proposed development and providing a left-turn channelization (striping) on Solar Drive to provide easier access to the properties. There is no financial consideration being paid for the license, however, the City will be required to reconfigure its existing access to comply with the terms of the license agreement. At such time as Flag Properties develops the adjacent property and the nature of its access needs are ultimately established and confirmed, the license will become a permanent easement. The License Agreement will allow for both Flag Properties and the City to have access through and across the property on which Blending Station No. 3 is located.

Subject/Permit
January 17, 2007
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FINANCIAL IMPACT

Site improvements associated with this License Agreement will be funded by the Blending Stations Improvement Fund, Account Number 601-6539-821-86-05 (Project 066001). There are sufficient funds in this account for expected budget expenses.

Attachment #1 - License Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**NORDMAN, CORMANY, HAIR & COMPTON LLP
Attn: Paul W. Kurzeka, Esq.
1000 Town Center Drive, Sixth Floor
Post Office Box 9100
Oxnard, California 93031-9100**

A.P.N. 213-0-070-045; -055 & 065

License Agreement

The undersigned hereby declare:

Documentary transfer tax is \$0.00. EXEMPT. No documentary transfer tax is due since easements have no apparent value. No consideration paid or received by any party.

THIS LICENSE AGREEMENT ("Agreement"), dated for identification purposes this 21st day of November, 2006, is entered into by and between **FLAG PROPERTIES**, a California limited partnership ("Flag"), whose address is 1000 Town Center Drive, 6th Floor, Post Office Box 9100, Oxnard, California 93031-9100, and **CITY OF OXNARD**, a political subdivision ("City"), whose address is 300 West Third Street, Suite 300, Oxnard, California 93030, based upon the following recitals of fact, terms and conditions:

RECITALS

A. Flag is the owner of that certain real property located in the County of Ventura, State of California, and more particularly described as follows:

Lot 4 and Lot 5 of Tract 4359, in the City of Oxnard, County of Ventura, State of California, as per map recorded in Book 114, Pages 29 and 30 of Maps, in the office of the County Recorder of said County.

A non-exclusive easement for ingress and egress purposes over the northerly 50 feet of Lot 6 of Tract 4359, together with a non-exclusive easement for storm drain purposes over the north 15 feet of the west 66.40 feet of Lot 5 of Tract No. 4359, as said easements and lots are shown on the Map of said Tract recorded in Book 114, Pages 29 and 30 of Maps, in the office of the County Recorder of Ventura County (hereinafter "Easement").

B. City is the owner of that certain real property located in the County of Ventura, State of California, and more particularly described as follows:

Lot 6 of Tract 4359, in the City of Oxnard, County of Ventura, State of California, as per map recorded in Book 114, Pages 29 and 30 of Maps, in the office of the County Recorder of said County.

C. The Easement is the primary means of ingress and egress to Lot 5 and the secondary means of ingress and egress to Lot 4. The Easement was initially created by a Tract Map that created Lots 4, 5, and 6, among other lots, that was recorded in Book 114, Pages 29 and 30 of Maps. The Easement was confirmed by a Grant of Easement for Ingress and Egress that was recorded on June 30, 1989, as Instrument No. 89-103618. Further, the Easement was confirmed by a written instrument that was recorded on December 26, 1995, as Instrument No. 95-158948, which instrument was the Grant Deed by which Flag acquired legal title to Lot 5. Finally, the Easement was confirmed by a written instrument entitled Notice of Intent to Preserve Interest that was recorded on December 1, 2005, as Instrument No. 2005-1201-0295978, all in the office of the County Recorder of Ventura County, California.

D. On November 7, 2003, City acquired legal title to Lot 6 subject to the existing Easement in favor of Flag by Grant Deed that was recorded on November 7, 2003, as Instrument No. 2003-1107-0428769 in the Official Records of Ventura County, California.

E. At the time that City acquired legal title to Lot 6, said property was raw unimproved land, with the exception of the most northerly fifty (50) feet that was improved with a paved driveway, curb, gutters and landscaping, which driveway serves as the primary access to Flag's Lot 5. During the fall of 2005, City commenced construction of a water blending facility on Lot 6 and as part of said construction changed the configuration and width of the paved driveway and curb located within the Easement area that encumbers the City's Lot 6 property.

F. By this Agreement, Flag and City desire to reflect the agreement between the parties related to the further modification of the driveway improvements recently constructed by City which reduced the width of the access driveway by an encroachment within the Easement area from fifty (50) feet to forty (40) feet, including, but not limited to, the terms and conditions by which Flag may unilaterally terminate this Agreement as provided hereinbelow.

NOW, THEREFORE, Flag and the City hereby agree as follows:

1. License. Subject to the terms and provisions set forth below, Flag hereby grants to City a non-exclusive license (the "License") to enter onto a portion of the Easement area for the purposes of (a) constructing, maintaining, repairing and replacing certain improvements as more particularly described in that certain diagram prepared by Kennedy/Jenks Consultants entitled "City of Oxnard Blending Station No. 3 & Well Pumping Facility Access Driveway Modification - Option 2 dated July 2006, K/J 034830.08, Figure 2" and (b) the installation, maintenance, repair, replacement and irrigation of landscape improvements located within the Easement area as part of the reconstruction of the driveway access. The License shall be applicable to licensee and licensee's employees, contractors and subcontractors for so long as the License continues to exist.

2. Completion of Improvements. The improvements to be constructed by City within the Easement area shall be constructed at City's sole cost and expense and shall be completed on or before June 30, 2008.

3. Landscape Improvements. City hereby agrees to maintain the landscape improvements, including the new landscaping to be installed by City on the north side of the driveway access immediately adjacent to and contiguous with the driveway located within the Easement area at City's sole cost and expense.

4. Driveway Median. The new median to be constructed in the access driveway by City shall be at the location and as depicted on the Kennedy/Jenks diagram K/J 034830.08, Figure 2.

5. Monument Sign. Flag or its tenants or its successors in interest shall have the right to construct and maintain a monument sign identifying the tenant or occupants of the existing building improvements on Lot 4 and/or such new buildings or improvements as may be constructed on Lot 5, which monument sign should be located at or near the most northwesterly corner of the City's Lot 6 where it abuts Wankel Way and Solar Drive. The dimensions and location of the monument sign shall be such as are permitted by the City's ordinances and regulations and development conditions concerning signs, and subject to such restrictions, shall be in substantial accordance with the terms, conditions and diagrams depicted in "Exhibit A", attached hereto and incorporated herein by this reference. The monument sign described herein shall be in addition to, and not in lieu of, such other sign or signs as may exist at other locations as of the date hereof, or such other additional signs as may exist or be proposed in the future, all of which are subject to the City's ordinances, regulations and development conditions concerning signs. 6. Driveway Access. City hereby agrees to provide a left turn into the access driveway located within the Easement area. Such left turn lane shall be constructed and installed by City at City's sole cost and expense.

7. Indemnification. City shall indemnify, defend and hold harmless Flag, its officers, directors, employees, agents and their successors and assigns, the Easement area, and at the option of Flag, defend with counsel approved by Flag, from and against any and all claims, liabilities, losses, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and litigation expenses) caused by or arising out of the activities of City, any contractor, subcontractor, employee, consultant, invitee or permittee of City, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, in connection with the performance of the construction and maintenance of the improvements to be constructed or maintained by City within the Easement area. The foregoing indemnity shall survive the termination of this Agreement for any reason.

8. Termination. City hereby acknowledges and agrees that Flag desires and intends to build certain improvements on Lot 5 and that it is anticipated that legal access to and from said Lot 5 shall be over and across the Easement area. Although the width of the Easement area is fifty (50) feet, by this License Agreement City shall be allowed to narrow the surface width of the access driveway (but not the granted Easement area) to forty (40) feet. The City presently believes that the reduced forty (40) foot width will be adequate to serve both the needs of the City and the needs of Flag for Flag's existing building on Lot 4 and the proposed future building on Lot 5. In the event that the City or any other governmental agency having jurisdiction over the properties require a wider access driveway as a condition to approving a new building to be constructed on Lot 5, then in such event, Flag shall have the unqualified right to unilaterally cancel and terminate this License Agreement. Such termination, if any, shall be effected by Flag, or its successors in interest, executing and recording a Notice of Termination of License Agreement in the form attached hereto as "Exhibit B" and incorporated herein by this reference. Said termination shall become effective on the sixtieth (60th) calendar day from and after the date upon which said Notice of Termination of License Agreement is duly recorded in the office of the Ventura County Recorder. Commencing on the sixty-first (61st) day following recordation, Flag, or its successors in interest, shall be entitled to take such steps as may be reasonably necessary to restore the driveway access to the

maximum width of the Easement area and shall not be responsible for or liable to City for the demolition and destruction of any improvements constructed by City within the Easement area. In the event of such termination, City at City's sole cost and expense, shall promptly restore and reconstruct the driveway access improvements (pavement, curbs and drainage) to the maximum fifty foot (50') width as granted in the Easement instrument. Further, in the event of such termination, City shall take such steps as are reasonably necessary to minimize the impact of such removal and reconstruction, and shall provide access to Flag's improvements located on Lot 4 and Lot 5 during the period of reconstruction.

9. Time is of the Essence. Time is of the essence of this Agreement and each and every term and provision of hereof.

10. Interpretation; Governing Law. This Agreement shall be construed as if prepared by both parties. This Agreement shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.

11. Severability. In the event that any phrase, clause, sentence, paragraph, section or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the full extent permissible by law.

12. Further Assurances; Survival. Each party will, whenever and as often as it shall be requested to do so by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, any and all further conveyances, assignments, approvals, consents and any and all other documents and do any and all other acts as may be necessary to carry out the intent and purpose of this Agreement.

13. Entire Agreement; Amendment. This Agreement, together with the other written documents or agreements referred to therein, it is intended by the parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the Agreement between the parties. As such, this Agreement supersedes any prior understandings between the parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all parties hereto.

14. Future Agreement. Once Flag has completed development of improvements on Lot 5, and provided that the access to those improvements does not require increasing the width of the access driveway to a width greater than forty (40) feet, and provided that the City has complied with the terms of this License Agreement, Flag agrees to execute and cause to be recorded such documents as are necessary and appropriate in form and substance reasonably acceptable to Flag and City to reduce the size of the existing Easement area to a width of forty (40) feet in accordance with and consistent with the width of the access driveway, so that the City will own Lot 6 subject to a forty (40) foot Easement in favor of Flag for access to Lot 5 and Lot 4.

15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

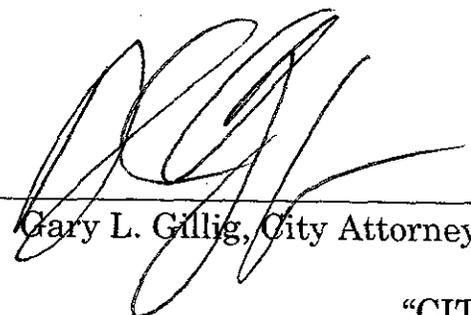
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth opposite their respective signatures below.

Dated: November __, 2006.

CITY OF OXNARD

By _____
Dr. Thomas E. Holden, Mayor

Approved as to form.

By  _____
Gary L. Gillig, City Attorney
"CITY"

**FLAG PROPERTIES,
a California limited partnership**

By _____
Michael May, President

By _____
Christina May, Secretary

"FLAG"

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

On November __, 2006, before me, Paul W. Kurzeka, Notary Public, personally appeared Michael May and Christina May, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

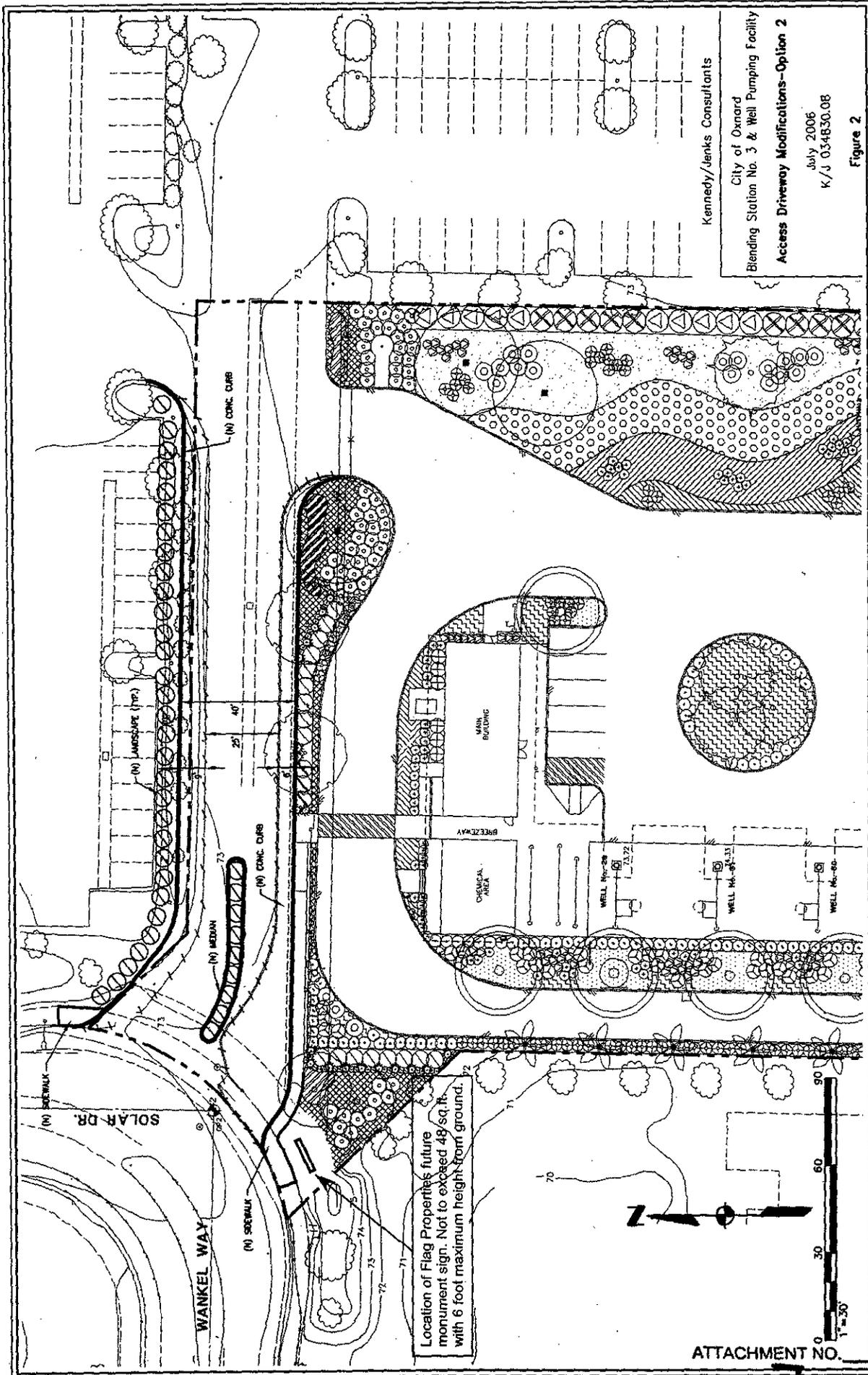
Paul W. Kurzeka, Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

On _____, __, 2006, before me, _____, Notary Public, personally appeared Thomas E. Holden, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

_____, Notary Public



Kennedy/Jenks Consultants
 City of Oxnard
 Blending Station No. 3 & Well Pumping Facility
 Access Driveway Modifications-Option 2
 July 2006
 K/J 034830.08
 Figure 2

Location of Flag Properties future monument sign. Not to exceed 48/sq ft. with 6 foot maximum height from ground.

ATTACHMENT NO. 7

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**NORDMAN, CORMANY, HAIR & COMPTON LLP
Attn: Paul W. Kurzeka, Esq.
1000 Town Center Drive, Sixth Floor
Post Office Box 9100
Oxnard, California 93031-9100**

A.P.N. 213-0-070-045; -055 & 065

Notice of Termination of License Agreement

The undersigned hereby declare:

Documentary transfer tax is \$0.00. EXEMPT. No documentary transfer tax is due since easements have no apparent value. No consideration paid or received by any party.

Pursuant to the terms of that certain License Agreement dated November ____, 2006, that was recorded on ____, 2006, as Instrument No. 2006-____ in the Official Records of the office of the County Recorder, State of California, Flag Properties, a California limited partnership, hereby terminates the License Agreement in accordance with paragraph 8 of said Agreement. The termination of the License Agreement shall become effective on the sixtieth (60th) calendar day following the date that this instrument is recorded in the office of the Ventura County Recorder.

The real property which is the subject of the aforementioned License Agreement is more particularly described as follows:

Lot 6 of Tract 4359, in the City of Oxnard, County of Ventura, State of California, as per Map recorded in Book 114, Pages 29 and 30 of Maps, in the office of the Ventura County Recorder.

Any and all inquiries arising from or related to either of the License Agreement or this Notice of Termination of License Agreement shall be directed as follows:

ATTACHMENT NO. 1
PAGE 8 OF 8