



Meeting Date: 07/26/11

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: Anthony Emmert, Water Resources Manager Agenda Item No. **I-12**

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Public Works

DATE: July 11, 2011

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director

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

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute a Restated 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 Number 3.
2. Approve a Special Budget Appropriation of \$135,000 from 2006 Water Bonds interest earnings to Blending Station No. 3 Driveway Modifications Project No. 126501.

DISCUSSION

In November 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.

At its meeting of January 17, 2007 the City Council approved and the Mayor subsequently executed a License Agreement that allowed the City to encroach upon Flag's easement and reduce the scope of Flag's use, with Flag and the City sharing access that accommodated both parties' needs. The License Agreement stipulated that the City would: 1) maintain the access area, 2) cooperate with Flag with respect to future signage for Flag's proposed development, 3) provide a left-turn channelization (striping changes) on Solar Drive to provide easier access to the properties, and 4) redesign and reconstruct the existing access roadway and adjacent landscaping. There was no financial consideration above the cost of the driveway and landscaping redesign and construction. Flag and the City agreed that the License Agreement would become a permanent easement only when Flag develops the adjacent property and the nature of its access needs are established and confirmed. Improvements were to have been completed by June 30, 2008.

Restated License Agreement to Encroach Upon Easement, Blending Station No. 3

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Subsequent to execution of the License Agreement, the City made striping changes in Solar Drive to allow southbound traffic to turn left into the access driveway. The City anticipated constructing a new desalter at the Blending Station No. 3 site, and planned to include the agreed-upon driveway improvements in the desalter project. Due to economic considerations, that project was delayed several years, and is not expected to be constructed until after 2015. Because of this delay, the driveway improvements need to move forward as a separate project. The Restated License Agreement stipulates that the City will design and reconstruct the existing access roadway and adjacent landscaping before June 30, 2012.

FINANCIAL IMPACT

Blending Station No. 3 Driveway Modifications Project 126501 will be funded from 2006 Water Bonds interest earnings to cover the cost of the Restated License Agreement.

(AAE)

Attachment #1 - Restated License Agreement with Flag Properties

Attachment #2 - Special Budget Appropriation

**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

Restated 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 RESTATED LICENSE AGREEMENT ("Restated License Agreement"), dated for identification purposes the 23rd day of June, 2011, 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:

Flag and the City previously entered into a License Agreement dated, for identification purposes the 21st day of November 2006 ("License Agreement"). That License Agreement provided that the City would complete certain improvements described therein on or prior to June 30, 2008. It also provided for termination upon other events described therein. Flag and the City also entered into a License Agreement Extension which extended the time for completion of improvements described in the License Agreement to October 15, 2008. The extension also provided that should Flag determine that it desired to develop Lot 5 described in the License Agreement and file an application or applications for entitlements to do so, Flag could require that the improvements as described in the License Agreement would be constructed within six months of the date of written notice from Flag to the City.

The parties desire to amend and restate the License Agreement, and affirm the rights and obligations contained in the License Agreement and Extension, and provide for a certain amendments thereto.

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:

N.A.
F.M.

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 Restated License 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 Restated License Agreement as provided hereinbelow.

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

M. J.
F.M

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 before June 30, 2012 provided however, should Flag determine that it desires to develop Lot No. 5 and should Flag file with the City an application or applications for a use permit or other entitlement(s) to do so, Flag may then, at its discretion, concurrent with or after applying for such permits or entitlements require the improvements to be constructed within six months of the date of first written notice from Flag to City that the improvements are to be constructed pursuant to the terms of the License Agreement.

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 has provided a left turn into the access driveway located within the Easement area.

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

F.C.J.
F.M

constructed or maintained by City within the Easement area. The foregoing indemnity shall survive the termination of this Restated License 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 Restated License Agreement as well as the License Agreement and Extension. Such termination, if any, shall be effected by Flag, or its successors in interest, executing and recording a Notice of Termination of License Agreement substantially in the form attached to the License Agreement 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 Restated License Agreement and each and every term and provision of hereof.

10. Interpretation; Governing Law. This Restated License Agreement shall be constructed 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 Restated License 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 Restated License 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 Restated License Agreement.

M, M.
F.M

13. Entire Agreement; Amendment. This Restated License 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 Restated License Agreement between the parties. As such, this Restated License Agreement supersedes any prior understandings between the parties, whether oral or written. Any amendments to this Restated License 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 Restated 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 Restated License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

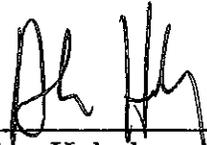
IN WITNESS WHEREOF, the parties hereto have executed this Restated License Agreement on the date set forth opposite their respective signatures below.

Dated:

CITY OF OXNARD

By _____
Dr. Thomas E. Holden, Mayor

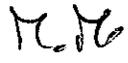
Approved as to form.

By  _____
Alan Holmberg, City Attorney

“CITY”

**FLAG PROPERTIES,
a California limited partnership**

By: Thatch, Inc., a California corporation,
Its General Partner


F.M.

By Michael May
Michael May, President

By Flavia May
Flavia May, Secretary

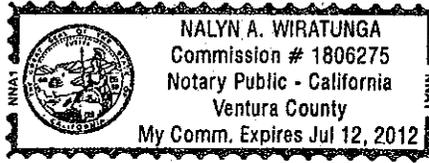
“FLAG”

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

On June 23rd, 2011, before me, NALYN A WIRATUNGA, Notary Public, personally appeared Michael May and Flavia 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.

Nalyn A Wiratunga
NALYN A WIRATUNGA Notary Public



STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

On _____, _____, 2011, 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

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

July 26, 2011

Request is hereby made for an appropriation of total \$ 135,000

Reason for appropriation: To fund the restated license agreement to encroach upon Blending Station No. 3 easement via new project "Blending Station No. 3 Driveway Modifications" from previous 2006 Water Revenue Bonds interest earnings recognized in the Water Operating Fund Balance

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
Water Operating Fund (601)	Blending Station No. 3 Driveway Modifications 601-6551 (Project 126501) 601-6551-821.86-01 LAND/EASEMENT/RT-OF-WAY	135,000

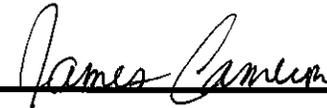
Net Estimated Change to Water Operating Fund Balance (Fund 601) 135,000



Manager

REQUIRES CITY COUNCIL APPROVAL

CHIEF FINANCIAL OFFICER



Disposition	Approved _____
Transfer by Journal Voucher _____	Rejected _____
	_____ City Manager

