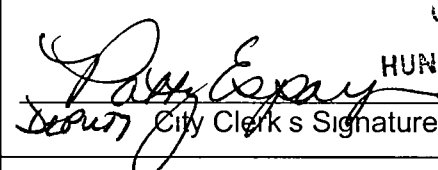





Council/Agency Meeting Held <u>3/20/06</u>	 CITY CLERK CITY OF HUNTINGTON BEACH City Clerk's Signature
Deferred/Continued to _____	
<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date 3/20/2006	Department ID Number ED 06-15

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY  PENELOPE CULBRETH-GRAFT CITY ADMINISTRATOR

PREPARED BY KENNETH W. SMALL CHIEF OF POLICE 
STANLEY SMALEWITZ DIRECTOR OF ECONOMIC DEVELOPMENT 

SUBJECT APPROVAL OF LICENSE AGREEMENT FOR BELLA TERRA
POLICE SUBSTATION AT 7777 EDINGER AVENUE SUITE D-135

Statement of Issue Funding Source Recommended Action Alternative Action(s) Analysis Environmental Status Attachment(s)
--

Statement of Issue The City Council is requested to approve a ten-year license agreement with Bella Terra Associates, LLC for the use of real property located at 7777 Edinger Avenue Suite D-135 for use by the Police Department for the new Bella Terra Substation

Funding Source Not Applicable

Recommended Action Motion to

- 1 Approve the lease agreement by and between the City of Huntington Beach and Bella Terra Associates LLC for the use of real property located at 7777 Edinger Avenue Suite D-135 for use by the Police Department for the Bella Terra Substation
- 2 Authorize execution of the lease agreement by the Mayor and City Clerk

Alternative Action(s) No alternatives to the proposed license agreement were considered

Analysis A license agreement between the City and Bella Terra Associates Inc for a police substation at the new Bella Terra Mall is submitted for approval. The mall owners have made available approximately 2 030 square feet of office space to the City for use by the Police Department at no cost. The City will only pay for its own telephone and cleaning services. The term of the agreement is ten years however the City will have the ability to terminate the agreement at any time upon 30 days written notice.

E-7

REQUEST FOR ACTION

MEETING DATE March 20, 2006

DEPARTMENT ID NUMBER ED 06-15

The Police Department has determined that operating a substation at Bella Terra will allow for a more substantial presence in the complex and the surrounding neighborhood, which would decrease response times and allow officers to stay in a more centralized area when processing paperwork and other routine assignments. The Department is currently considering basing two full-time officers to operate the substation Thursday through Sunday. Volunteers are anticipated to staff the reception area during business hours Monday through Friday.

Staff recommends approval of the proposed license agreement which has been reviewed and approved by the City Attorney.

Environmental Status Not applicable

Attachment(s)

City Clerk's Page Number	No.	Description
	1	Lease agreement by and between the City of Huntington Beach and Bella Terra Associates LLC for the use of real property located at 7777 Edinger Avenue Suite D-135
	2	Site Map

**Lease agreement by and between the City of Huntington
Beach and Bella Terra Associates, LLC for the use of real
property located at 7777 Edinger Avenue, Suite D-135**

ATTACHMENT #1

LICENSE AGREEMENT

This License Agreement (' Agreement') is made this 20th day of March 2006 by and between Bella Terra Associates, LLC, a Delaware limited liability company ("Licensor"), and the City of Huntington Beach ('Licensee')

RECITALS

WHEREAS Licensor owns and operates the Bella Terra Shopping Center ('Center') located at 7777 Edinger Avenue, Huntington Beach, California,

WHEREAS Licensee desires to occupy a portion of Suite D-135 located in the Management Office/Security Offices located in the Center as shown on the attached **Exhibit A**, consisting of approximately 2,030 square feet (hereinafter referred to as the ' Licensed Area') for purposes of operating a City of Huntington Beach Police Substation and

WHEREAS Licensor is willing to grant Licensee use of the Licensed Area subject to the terms and provisions of this Agreement,

NOW, THEREFORE, Licensor hereby grants and Licensee hereby accepts a revocable license to operate at the Licensed Area, subject to the terms and provisions hereinafter set forth

ARTICLE I LICENSED AREA AND USE THEREOF

Section 1 1 Licensor hereby grants to Licensee and Licensee hereby accepts from Licensor a License to use the Licensed Area of the Center. The Licensed Area shall be used solely for operation of a City of Huntington Beach Police Substation. Licensee shall have the right, but not the obligation to operate in Licensed Area 365 days per year, 24 hours per day

Section 1 2 The Licensed Area shall be equipped set up and maintained at the sole expense of Licensee. Licensor agrees to furnish to the Licensed Area electricity water gas, trash service, internet access, and sewer service and deliver the Licensed Area to Licensee equipped with these services. Licensee accepts the Licensed Area in its current "as-is" condition. Subject to the provisions of Article XV below, Licensee shall have the right during the term of this Agreement to make, at its own expense, any interior, cosmetic alterations or improvements to the Licensed Area. Licensee at Licensee's cost, shall repair any damage to the Licensed Area caused by Licensee or Licensee's contractors during performance of such alterations or improvements in or on the Licensed Area. Licensee shall have the right to install satellite dishes and/or other antennas and/or other facilities for television, music and telecommunications ('Communication Equipment') on, and affix Communication Equipment to on or about the Licensed Area. Any satellite dishes or antennas on the roof shall be properly screened to Licensor's satisfaction. Licensee's use of the Licensed Area shall be exclusive for the term specified herein and not violate applicable laws and ordinances. All such work shall be performed in a first class manner and shall comply with all laws and regulations.

Section 1 3 Licensor and Licensee acknowledge and agree that

(a) Neither the Licensed Area, nor any other space or area whatsoever at the Center is leased to the Licensee. During the term of this Agreement, the Licensee shall have the use of the Licensed Area as Licensee solely for the purposes and uses herein stated. The Licensee shall have the right to occupy the Licensed Area and to operate pursuant to the License hereby granted and to continue in the possession thereof only so long Licensee is in compliance with the terms and conditions of this Agreement.

(b) Licensee shall use the Licensed Area solely for the purpose stated in Section 1.1, and for no other purposes whatsoever.

(c) Licensee shall in no way interfere with nor jeopardize the business or reputation of the Property.

(d) Licensee acknowledges that neither the Licensor nor its personnel will have any responsibility for the operation of the Licensed Area. Licensee's operations therein or any other aspect of Licensee's operations. Licensee shall indemnify and hold harmless Licensor (its officers, principals and employees), its Landlord and mortgagee (hereinafter referred to collectively as the additional insureds) against any claims, costs or liabilities related to or arising out of Licensee's use of the Licensed Area or Licensee's obligation under this Agreement. Licensee shall provide insurance as specified in Article IV of this Agreement and name the additional insureds on these insurance policies as their interests may appear. Licensee further agrees to provide its employees within all required coverage, including without limitation workmen's compensation insurance. Licensee shall pay all costs incurred with respect to the insurance coverage provided by Licensee under this Agreement.

(e) Licensee has not relied upon any representation, statement or warranty of Licensor or of Licensor's agents or employees with respect to the Licensed Area, the Center or the business to be conducted thereat, and in no event shall Licensor be liable to Licensee for any defect in the Licensed Area or for any limitation on its use (except to the extent of Licensor's or Licensor's agents gross negligence or willful misconduct) and Licensee accepts the same "AS IS WHERE IS".

(f) **Signs and Decor.** All signage and decor to be placed on the exterior of Licensed Area by Licensee shall be manufactured and displayed in accordance with the Sign Criteria Program developed by Licensor, as the same may change from time to time.

(g) **Grant of Nonexclusive Common Area Rights.** Licensor hereby grants to Licensee its patrons, employees, and authorized representatives a nonexclusive right to use the Common Area within the Center for vehicular parking and for pedestrian and vehicular ingress, egress and travel and restroom access. Licensor shall provide Licensee with two dedicated parking spaces in the service yard at the nearest possible location to the Licensed area or at a location mutually agreeable to both Licensor and Licensee.

ARTICLE II TERM

Section 2 1 The term of this Agreement herein granted shall commence as of MARCH 20, 2006 for a TEN (10) year term which shall expire on _____, unless sooner extended or terminated as specifically provided herein

Section 2 2 Notwithstanding the foregoing, Licensee shall have the right to terminate the term of this Agreement without any further obligations or liability hereunder upon not less than thirty (30) days' prior written notice of such election. Licensor shall have the right to terminate the term of this Agreement without any further obligations or liability hereunder upon not less than sixty (60) days' prior written notice of such election

Section 2 3 This Agreement may be extended at any time by mutual consent of the parties subject to the terms herein

ARTICLE III LICENSEE FEE

Section 3 1 There shall be no license fee associated with or required by this License Agreement

ARTICLE IV INSURANCE

Section 4 1 Insurance Licensee shall at all times during the term of this Agreement and at its own cost and expense maintain, procure and continue in force commercial general liability insurance for personal injury bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Two Million and No/100 Dollars (\$2,000,000 000) per occurrence naming Licensor as an additional insured. Certificates of Insurance evidencing the required insurance coverage shall be delivered to Licensor prior to Licensee's occupancy of the Licensed Area and thereafter executed copies of renewal policies or certificates thereof shall be delivered to Licensor within thirty (30) days prior to the expiration of the term of each such policy. All policies on insurance delivered to Licensor must contain a provision that the company writing the policy will give Licensor twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All policies shall be written as primary policies and shall provide that any insurance which Licensor or Licensor's lender may carry is strictly excess, secondary and non-contributing with any insurance carried by Licensee. Licensee shall be permitted to carry the insurance required in this Agreement under a blanket policy which also covers other locations of the Licensee. **Notwithstanding the foregoing, the Licensee may provide liability insurance through the Big Independent Cities Excess Pool ("BICEP"), providing for a self insured retention in the amount applicable to all the members of BICEP (for calendar year 2006, such self insured retention amount is \$1,000,000 with the member cities risk sharing any losses from \$1,000,000 to \$2,000,000 or larger)**

Section 4.2 Indemnifications and Waivers

(a) **Indemnity** To extent permitted by law, and except to the extent any such damage, loss, claim, liability, or expense is attributable to the gross negligence or willful misconduct of Licensor, its employees, authorized agents and representatives, Licensee will at Licensee's sole cost and expense indemnify Licensor Parties against all Claims arising from (i) any Personal Injury, Bodily Injury or Property Damage whatsoever occurring in or at the Licensed Area, (ii) any Bodily Injury to an employee of a Licensee Party arising out of and in the course of employment of the employee and occurring anywhere in the Center, (iii) the use or occupancy or manner of use of occupancy, or conduct or management of the Licensed Area by Licensee.

(b) **Waivers** To the extent permitted by law, and except to the extent any such damage, loss, claim, liability, or expense is attributable to the gross negligence or willful misconduct of Licensor, its employees, authorized agents and representatives, Licensee on behalf of all Licensee Parties, waives all Claims against Licensor Parties arising from the following: (i) any Personal Injury, Bodily Injury or Property Damage whatsoever occurring in or at the Licensed Area, (ii) any loss of or damage to property of a Licensee Party located in the Licensed Area or other part of the Center by theft or otherwise, (iii) any Personal Injury, Bodily Injury or Property Damage to any Licensee Party caused by other tenants of the Center, parties not occupying space in the Center, occupants of property adjacent to the Center, or the public or by the construction of any private, public or quasi-public work occurring either in the Licensed Area or elsewhere in the Center, (iv) any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage, (v) business interruption or loss of use of the Licensed Area suffered by Licensee, (vi) any latent defect in construction of the Center, (vii) damages or injuries or interference with Licensee's business, loss of occupancy or quiet enjoyment and any other loss resulting from the exercise by Licensor of any right or the performance by Licensor of Licensor's maintenance or other obligations under this Agreement, or (viii) any Bodily Injury to an employee of a Licensee Party arising out of and in the course of employment of the employee and occurring anywhere in the Center.

(c) Licensor shall protect, defend, indemnify and hold harmless Licensee, its officers, officials, employees and agents from and against any and all liability, loss, damage, expenses, costs (including without limitation costs and fees of litigation of every nature) arising out of or in connection with Licensor's performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the negligence or willful misconduct of the Licensee.

(d) **Waivers of Subrogation** Licensor and Licensee each hereby waive all rights of recovery against the other on account of loss and damage occasioned to such waiving party to the extent that such loss or damage is insured against under any insurance policies carried by the waiving party. Licensor and Licensee shall each cause their insurers to waive their subrogation rights consistent with the foregoing.

(e) **Definitions** For purposes of this Paragraph 9 (i) the term 'Licensee Parties' means Licensee, and Licensee's officers, members, partners, agents, employees, subLicensees, licensees, invitees and independent contractors and all persons and entities.

claiming through any of these persons or entities, (ii) the term "Licensor Parties" means Licensor and the partners, venturerer, trustees and ancillary trustees of Licensor and the respective officers, directors shareholders, members, parents, subsidiaries and any other affiliated entities, personal representatives, executors, heirs, assigns licensees, invites, beneficiaries, agents, servants employees and independent contractors of these persons or entities, (iii) the term "Indemnify" means indemnify, defend (with counsel reasonably acceptable to Licensor) and hold free and harmless for, from and against, (iv) the term "Claims" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits proceedings, judgments, disbursements charges, assessments and expenses (including attorneys and experts' fees and expenses incurred in investigating defending, or prosecuting any litigation, claim, or proceeding), (v) the term "Waivers" means that the Licensee Parties waive and knowingly and voluntarily assume the risk of and (vi) the term "Bodily Injury", "Personal Injury" and "Property Damage" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc most recently prior to the date of the injury or loss in question

ARTICLE V TAXES AND OTHER CHARGES

Section 5.1 Licensee shall pay and discharge when due and prior to the imposition of any interest or penalty for delinquency in payment, all taxes, fees, or assessments imposed upon the operation of the Licensee's use of the Licensed Area. Notwithstanding the foregoing, Licensee shall not be obligated to pay any taxes, charges or assessments applicable to Licensor's collection of the License Fee or with respect to Licensor's ownership of the Center

Section 5.2 If requested by Licensor, Licensee shall furnish to Licensor a receipt or other evidence of the payment of each tax, assessment or imposition, or any such other charge which is payable by Licensee within five (5) business days of such request

Section 5.3 Licensee shall provide for and maintain its own secure telecommunications and data line equipment within the leased premises, and shall be responsible for the cost of maintaining these designated utilities. Licensee shall also provide for and maintain a cleaning service for the leased premises, and shall be responsible for the cost of this service. Licensor shall maintain and provide payment for all other utilities associated with the leased premises, including but not limited to, electrical, gas, water, sewer and trash services and shall pay all common area maintenance costs (CAM costs) including taxes insurance and management fees. Licensee shall not pay any additional rent or CAM costs. Licensee shall not be responsible for any utilities serving the Common Areas of the Property.

TJ 51106

Section 5.4 Licensee shall, during the Term of this Agreement, keep the Licensed Area in neat and clean condition subject to Licensor's obligations

claiming through any of these persons or entities, (ii) the term 'Licensor Parties' means Licensor and the partners venturerer trustees and ancillary trustees of Licensor and the respective officers, directors shareholders, members, parents, subsidiaries and any other affiliated entities, personal representatives executors, heirs assigns licensees, invites, beneficiaries, agents, servants, employees and independent contractors of these persons or entities, (iii) the term 'Indemnify' means indemnify defend (with counsel reasonably acceptable to Licensor) and hold free and harmless for from and against (iv) the term 'Claims' means all liabilities, claims damages (including consequential damages) losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments and expenses (including attorneys and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding), (v) the term "Waivers" means that the Licensee Parties waive and knowingly and voluntarily assume the risk of and (vi) the term 'Bodily Injury' "Personal Injury" and 'Property Damage' will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc most recently prior to the date of the injury or loss in question

ARTICLE V TAXES AND OTHER CHARGES

Section 5 1 Licensee shall pay and discharge when due and prior to the imposition of any interest or penalty for delinquency in payment all taxes, fees, or assessments imposed upon the operation of the Licensee's use of the Licensed Area Notwithstanding the foregoing Licensee shall not be obligated to pay any taxes charges or assessments applicable to Licensor's collection of the License Fee or with respect to Licensor s ownership of the Center

Section 5 2 If requested by Licensor, Licensee shall furnish to Licensor a receipt or other evidence of the payment of each tax, assessment or imposition, or any such other charge which is payable by Licensee, within five (5) business days of such request

Section 5 3 Licensee shall provide for and maintain its own secure telecommunications and data line equipment within the leased premises and shall be responsible for the cost of maintaining these designated utilities Licensee shall also provide for and maintain a cleaning service for the leased premises and shall be responsible for the cost of this service Licensor shall maintain and provide payment for all other utilities associated with the leased premises, including but not limited to, electrical gas, water, sewer and trash services, and shall pay all common area maintenance costs (CAM costs) including taxes, insurance, and management fees Licensor^{ee} shall not pay any additional rent or CAM costs Licensee shall not be responsible for any utilities serving the Common Areas of the Property

TAX 51106

Section 5 4 Licensee shall during the Term of this Agreement, keep the Licensed Area in neat and clean condition subject to Licensor s obligations

ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES ON DEFAULT

Section 6 1 Any of the following occurrences or acts shall constitute an 'Event of Default' under this Agreement

(a) If Licensee shall

(i) default in making payment when due of the License Fee and such default shall continue twenty (20) business days of notice of non payment (but notwithstanding, no notice or 20 day cure period shall apply more than one time during the term of this Agreement), or

(ii) default in making payment when due of any other amount payable by Licensee hereunder and such default shall continue twenty (20) business days of notice of non payment (but notwithstanding no notice or 20 day cure period shall apply more than one time during the term of this Agreement), or

(iii) default in the observance or performance of any other provision of this Agreement to be observed or performed by Licensee hereunder or

(b) The suspension, revocation or expiration of any of the Licensee's licenses required to conduct its business at the Licensed Area, or

(c) Licensee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or under any similar federal or state law now or hereafter in effect, or shall be adjudicated a bankrupt or become insolvent, or shall make an assignment for the benefit of its creditors, or shall admit in writing of its inability to pay its debts as they become due, or shall be dissolved or shall suspend payment of its obligations, or shall take any corporate action for the purpose of effecting any of the foregoing

Section 6 2 Except with respect to Section 6 1(a)(i) and 6 1(a)(ii), whenever an Event of Default shall have occurred, Licenser may, at its election, in its sole discretion, terminate this License upon ten (10) business days written notice to Licensee whereupon all rights of Licensee to the use of the Licensed Area shall forthwith terminate as though this License had never been made, and Licenser shall have the immediate right of possession of the Licensed Area and the right to remove all persons and property therefrom without liability to the Licensee whatsoever, and in addition shall have the right to recover forthwith from the Licensee any and all License Fees and all other amounts payable by Licensee hereunder which have become due as of the date the termination of this License. Notwithstanding the foregoing, no Event of Default shall deem to have occurred if Licensee cures said Default prior to the expiration of the twenty (20) day notice period. In the event of a Default under Section 6 1(a)(i) or 6 1(a)(ii), after the applicable cure period, Licenser may, at its election, in its sole discretion, terminate this License with no further notice required to Licensee whereupon all rights of Licensee to the use of the Licensed Area shall forthwith terminate as though this License had never been made, and Licenser shall have the immediate right of possession of the Licensed Area and the right to remove all persons and property therefrom without liability to the Licensee whatsoever, and in addition shall have the right to recover forthwith from the Licensee any and all License Fees and all other amounts

payable by Licensee hereunder which have become due as of the date the termination of this License

Section 6 3 The failure of the Licensor to insist upon a strict performance of any term or condition of this Agreement shall not be deemed a waiver of any right or remedy that the Licensor may have and shall not be deemed a waiver of any subsequent breach of such term or condition

ARTICLE VII DAMAGE OR DESTRUCTION OF THE CENTER / EMINENT DOMAIN

In the event of (material) damage to or destruction of the Center or to the Licensed Area, or in the event any (material) portion of the Center or Licensed Area shall be lawfully taken or condemned, either Licensee or Licensor shall have the right to terminate this Agreement as of the date of the damage or destruction or as of the taking (as the case may be) and upon such termination all License Fees shall be prorated and neither party shall thereafter have any rights or obligations thereafter accruing under this Agreement Licensee shall have no obligation with respect to any damage or destruction to the Licensed Area of the Center due to any casualty

ARTICLE VIII ASSIGNMENT

Section 8 1 Licensee shall not assign this Agreement or any interest therein and shall not sublicense the Licensed Area or any part thereof without the prior written consent of Licensor at Licensor s sole and absolute discretion

ARTICLE IX BINDING EFFECT, MERGER AND CONSOLIDATION, ENTIRE AGREEMENT

Section 9 1 All the terms and provision contained in this Agreement shall be binding upon inure to the benefit of and be enforceable by, the successors and assigns of Licensor to the same extent as if each such successor or assign were named as part of this Agreement

Section 9 2 This Agreement embodies the entire agreement between Licensor and Licensee relating to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter Neither this Agreement nor any provision hereof may be amended, modified, waived discharged or terminated orally but only as expressly provided herein or by an instrument signed by Licensor and Licensee

Section 9 3 As used in this Agreement and whenever required by the context thereof, each number both singular and plural shall include all numbers and each gender shall include all genders Licensor and Licensee as used in this Agreement or in any other instrument referred to in or made a part of this Agreement shall likewise include both the singular and the plural, a corporation co partnership, individual or person acting in any fiduciary capacity as executor, administrator trustee or in any other representative capacity All covenants herein contained on the part of Licensor and Licensee shall be joint and several The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the parties If any provision of this Agreement is held by an

arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

ARTICLE X NOTICES

Section 10.1 All Notices must be in writing and shall be deemed to have been properly given or served by depositing in the United States Mail, postpaid and registered or certified return receipt requested, or sent by overnight delivery service, and addressed to the addresses set forth below. All Notices shall be effective upon being deposited in the United States Mail. However, the time period in which a response to any Notice must be given, if any, shall commence to run from the date of receipt of the Notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. By giving at least five (5) days Notice thereof, either party shall have the right to specify as its address any other address within the United States of America.

Licensor's Address	Bella Terra Associates, LLC c/o DJM Capital Partners 60 S. Market Street, Suite 1120 San Jose, CA 95113 – 2366 408-271-0366 408-271 0377 – Fax Tax ID# 20-2921485
Licensee's Address	City of Huntington Beach ATTN: Chief of Police 2000 Main Street P O Box 190 Huntington Beach CA 92648
With copy to	City of Huntington Beach Real Estate Services ATTN: Steve Holtz 2000 Main Street Huntington Beach, CA 92648

ARTICLE XI CONTROVERSY

Section 11 1 Any controversy arising under this Agreement which is not resolved by the parties hereto shall be determined in and by the courts of the State of California, in accordance with the laws of the State of California

ARTICLE XII COMPLIANCE

Section 12 1 Licensee agrees at its own cost and expense to promptly execute and comply with all present or future rules, regulations, requirements laws and ordinances of all governmental authorities having jurisdiction of the Licensed Area or the business of Licensee thereat, and to obtain all licenses and/or permits required to conduct the business of Licensee at the Licensed Area Notwithstanding the foregoing, Licensor shall not be responsible for any alterations or additions to the Licensed Area required by applicable laws and/or ordinances

ARTICLE XIII MISCELLANEOUS

Section 13 1 Nothing contained herein nor this Agreement shall be construed nor is it the intent of the parties to create a joint venture or partnership between Licensor and Licensee

Section 13 2 This Agreement is not to be recorded If this provision is breached any such recording shall be deemed null and void

Section 13 3 If any provision of this Agreement or the application thereof to any person or in any circumstances shall be determined to be invalid, unlawful or unenforceable to any extent, then the remainder of this Agreement, and the application of such provisions other than the ones deemed invalid unenforceable or unlawful shall not be affected thereby and each remaining provision hereof shall continue to be valid and may be enforced to the fullest extent permitted by law

Section 13 4 Nondiscrimination Licensee covenants by and for itself, its successors and assigns, and all persons claiming under or through it and this Agreement is made and accepted upon and subject to the following conditions That there shall be no discrimination against or segregation of any person or group of persons on account of sex marital status, race, color religion creed, national origin or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the Property nor shall Licensee itself, or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection location number use or occupancy of tenants Licensees, subLicensees, subtenants or vendees in the Center

Section 13 5 Holding Over If Licensee continues to occupy the Licensed Area following the expiration or termination of this Agreement, such holding over shall constitute renewal of this License on a month to month basis, with License Fee payable for each month equal to 125% of the License Fee payable during the original term The License Term may

thereafter be terminable by either party upon one month's notice and otherwise on the terms of this Agreement

Section 13 6 Authority Each signatory to this Agreement represents and warrants that (i) he or she is duly authorized to execute and deliver this Agreement on behalf of such entity in accordance with its corporate bylaws, statement of partnership or certificate of limited partnership, as the case may be, (ii) this Agreement is binding upon said entity in accordance with its terms, and (iii) the entity is a duly organized and legally existing corporation or partnership in good standing in the State of California

Section 13 7 Attorneys' Fees In the event that any action shall be instituted by either of the parties to this Agreement (or their successors) for the enforcement of any of their rights in and under this Agreement, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non prevailing party

Section 13 8 Conference Room Licensee and Licensor agree to share the Conference Room adjacent to the Licensed Area, and identified on Exhibit A, on a first come first served basis pursuant to rules and procedures reasonably determined by Licensor. This conference room shall not house any City of Huntington Beach Police Department telecommunications equipment

Section 13 9 Brokers Each party warrants to and for the benefit of the other that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Agreement and each of the parties agrees to indemnify the other against, hold it harmless from, all liabilities arising from any such claim (including, without limitation, the cost of attorney's fees in connection therewith)

Section 13 10 Legal Services Subcontracting Prohibited Licensor and Licensee agree that Licensee is not liable for payment of any subcontractor work involving legal services and that such legal services are expressly outside the scope of services contemplated hereunder. Licensor understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for Licensee, and Licensee shall not be liable for payment of any legal services expenses incurred by Licensor

Section 13 11 Duplicate Original The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who signed it.

ARTICLE XIV SUBORDINATION

This Agreement shall be subject and subordinate at all times to the lien of any mortgage, which may now or hereafter affect the Licensed Area. Licensee will execute and deliver any instrument which may be required by Licensor in confirmation of such subordination promptly upon the request of the Licensor. If the Licensee shall fail at any time to execute, acknowledge

and deliver any such instrument Licensor in addition to any other remedies available to it may execute acknowledge and deliver the same as attorney in-fact of the Licensee and in the Licensee's name place and stead, and the Licensee hereby irrevocably makes, constitutes and appoints Licensor its successor and assigns, such attorney in-fact for that purpose

ARTICLE XV ALTERATIONS AND ADDITIONS

Section 15 1 Licensee shall obtain Licensor's prior written consent for alterations improvements additions, utility installations or repairs in on or about the Licensed Area, or the Center which are (i) structural in nature, or (ii) non-structural in nature and exceed a total cost of Five Thousand Dollars (\$5,000 00) per alteration/addition Licensor may give or withhold its consent to any structural alterations, improvements, additions Utility Installations or repairs in its sole and absolute discretion As used in this Section 15 1 the term "Utility Installation" shall mean carpeting, window and wall coverings, power panels, electrical distribution systems lighting fixtures air conditioning, plumbing, and telephone and telecommunication wiring and equipment Licensor may require Licensee to remove said alterations, improvements, additions or Utility Installations at the expiration of the term to restore the Licensed Area and the Center to their prior condition at Licensee's expense Should Licensor permit Licensee to make its own alterations, improvements additions, or Utility Installations Licensee shall use only such contractor as has been expressly approved by Licensor Should Licensee make any alterations improvements, additions or Utility Installations without the prior approval of Licensor or use a contractor not expressly approved by Licensor, Licensor may, at any time during the term of the Lease, require that Licensee remove any part or all of the same

Section 15 2 Any alterations, improvements, additions or Utility Installations in or about the Licensed Area or the Center that Licensee shall desire to make which are (i) structural in nature, or (ii) non-structural in nature and exceed a total cost of Five Thousand Dollars (\$5,000 00) per alteration/addition shall be presented to Licensor in written form, with proposed detailed plans Licensee shall reimburse Licensor as additional rent for Licensor's actual costs in reviewing any proposed plans whether or not Licensor's consent thereto is given If Licensor shall give its consent to Licensee's making such alteration improvement, addition or Utility Installation, the consent shall be deemed conditioned upon Licensee acquiring a permit to do so from the applicable government agencies furnishing a copy thereof to Licensor prior to the commencement of the work, and compliance by Licensee with all conditions of said permit in a prompt and expeditious manner Licensor's approval of plans, specifications and working drawings for Licensee's alterations improvements, additions or Utility Installations shall create no responsibility or liability on the part of Licensor for their completeness, design, sufficiency or compliance with all laws, rules and regulations of governmental agencies or authorities

Section 15 3 Licensee shall pay when due, all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at or for use in the Licensed Area which claims are or may be secured by any mechanic's or materialmen's lien against the Licensed Area the or the Centert or any interest therein

Section 15 4 Licensee shall give Licensor not less than ten (10) days notice prior to the

commencement of any work in the Licensed Area by Licensee, and Licensoi shall have the right to post notices of non-responsibility in or on the Licensed Area or the Center as provided by law. If Licensee shall, in good faith, contest the validity of any such lien, claim or demand, then Licensee shall, at its sole expense, defend itself and Licensoi against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Licensoi or the Licensed Area, or the Center, upon the condition that if Licensoi shall require Licensee shall furnish to Licensoi a surety bond satisfactory to Licensoi in an amount equal to such contested lien or claim or demand indemnifying Licensoi against liability for the same and holding the Licensed Area and the Center free from the effect of such lien or claim. In addition, Licensoi may require Licensee to pay Licensoi's reasonable attorneys' fees and costs in participating in such action if Licensoi shall decide it is to Licensoi's best interest to do so.

Section 15.5 All alterations, improvements, additions and Utility Installations, which may be made to the Licensed Area by Licensee including but not limited to, floor coverings, paneling, doors, drapes, built-ins, moldings, sound attenuation, and lighting and telephone or communication systems, conduit, wiring and outlets, shall be made and done in a good workmanlike manner and of good and sufficient quality and materials and shall be the property of Licensoi and remain upon and be surrendered with the Licensed Area at the expiration of the Lease term, unless Licensoi requires their removal pursuant to Section 15.1. Provided Licensee is not in default notwithstanding the provisions of this Section 15.5, Licensee's personal property and equipment, other than that which is affixed to the Licensed Area so that it cannot be removed without material damage to the Licensed Area or the Center, and other than Utility Installations, shall remain the property of Licensee and may be removed by Licensee subject to the provisions of Section 1.2.

Section 15.6 Licensee shall provide Licensoi with as-built plans and specifications for any alterations, improvements, additions or Utility Installations.

ARTICLE XVI SECURITY DEPOSIT AND TERMINATION

Section 16.1 – Licensoi and Licensee agree there shall be no security deposit associated with or required by this Agreement.

Section 16.2 – Upon termination of this License for any reason whatsoever, Licensee shall restore the Licensed Area to its condition immediately preceding the term of this License.

ARTICLE XVII COMPLIANCE WITH OWNER PARTICIPATION AGREEMENT (OPA)

Licensee hereby acknowledges and agrees to be bound by, Sections 501-505 of the OPA By and Between the Redevelopment Agency of the City of Huntington Beach and Huntington Center Associates, LLC, as well as the agreement containing covenants affecting real property filed with the Orange County Clerk Recorder's office as Document No. 2005-000643199.

ARTICLE XVIII
LICENSEE'S CONTRACT ADMINISTRATOR

Licensee's Director of Economic Development, or his / her designee, shall be Licensee's Contract Administrator for this Agreement with the authority to act on behalf of Licensee for the purposes of this Agreement, and all Licensee approvals and notices required to be given herein to Licensee shall be so directed and addressed

IN WITNESS WHEREOF the parties have caused the proper execution of this Agreement as of the date set forth above

LICENSOR

BELLA TERRA ASSOCIATES LLC,
a Delaware limited liability company

By 

Its Vice President

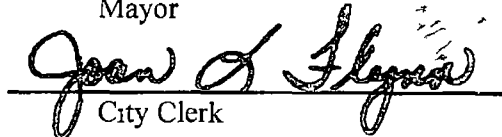
Date 3-7-06

LICENSEE

City of Huntington Beach a municipal
corporation of the State of California

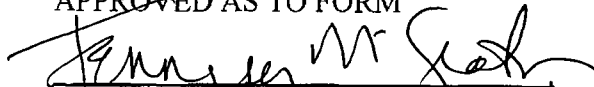


Mayor




City Clerk

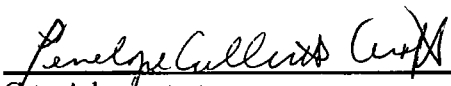
APPROVED AS TO FORM


City Attorney 72318106 2/8/06

INITIATED AND APPROVED

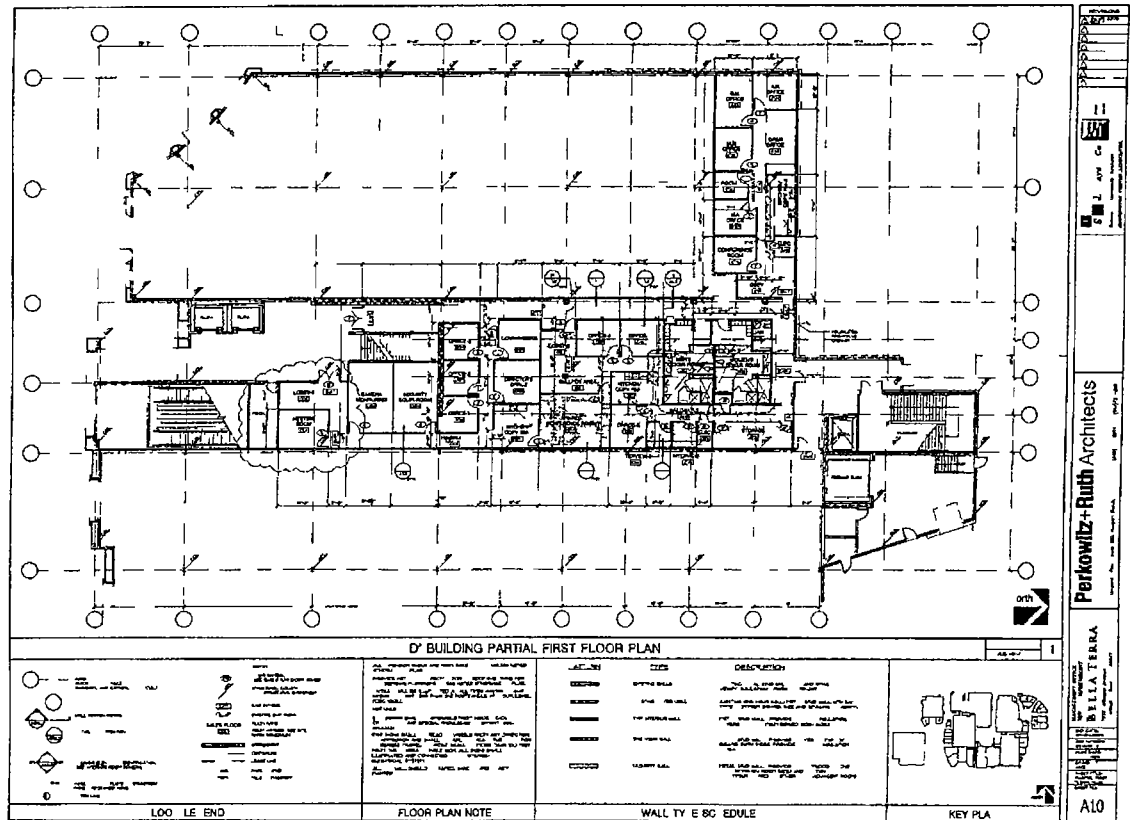

Director of Economic Development

REVIEWED AND APPROVED



City Administrator

Licensed Area



Light shaded area = Licensed Area

Darker shaded area = Adjacent Conference Room

Site Map

ATTACHMENT #2

Site Map
Bella Terra Police Substation
7777 Edinger Avenue, Suite D-135

