



Community Redevelopment Agency Staff Report

DATE: November 5, 2008

CONSENT CALENDAR

SUBJECT: APPROVAL OF A LICENSE AGREEMENT WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, A CORPORATION, ON BEHALF OF THE RIVERSIDE CAMPUS, FOR USE OF THE AGENCY-OWNED VISITOR CENTER PARKING LOT LOCATED AT 2901 NORTH PALM CANYON DRIVE FOR THE PURPOSE OF VANPOOL PROGRAM PARKING

FROM: David H. Ready, Executive Director

BY: Community & Economic Development Department

SUMMARY:

The License Agreement is for use of the Agency-owned parking lot located at the Visitor Center at 2901 North Palm Canyon Drive by the Regents of the University of California, a California Corporation, on behalf of the Riverside campus. The approval of this License Agreement will allow for the University of California, Riverside (UCR) to use the facility for the purpose of their Palm Springs-to-UCR Vanpool Program. The University operates a vanpool service that provides local residents transportation from Palm Springs to the Riverside campus. The Agency property will be used as the Park and Ride lot for this popular program.

RECOMMENDATION:

1. Approve Agreement No. _____, License Agreement by and between the Regents of the University of California, a California Corporation on behalf of the Riverside campus, and the Community Redevelopment Agency of the City of Palm Springs for non-exclusive use of the Agency owned Visitor Center Parking Lot at 2901 North Palm Canyon Drive.
2. Authorize the Executive Director or his designee to execute all the necessary documents.

ITEM NO. RA2

BACKGROUND:

Staff has recently discussed the possibility of using various City owned properties as a potential Park and Ride Station. In August, UCR contacted the City about developing a potential site for a park and ride lot to accommodate their Coachella Valley employees. As potential sites were discussed the University vanpool program coordinator expressed interest in the parking lot at the Visitor Center. The location and the access to Highway 111 make the site perfect.

UCR would like to enter into a License Agreement with the Agency for use of the Visitor Center lot. The University will provide insurance and indemnity the City. Entering into a License Agreement would be a positive collaborative venture with the UCR campus vanpool program and be another effort on the part of the City to reduce energy usage.

FISCAL IMPACT:


There will be no fiscal impact to the City or Agency.



John S. Raymond, Director
Community & Economic Development



Jennifer Henning
Public Arts and Special Projects Coordinator



for David H. Ready, Esq., Ph.D.
Executive Director



Thomas J. Wilson
Assistant City Manager

Attachments:

1. Regents of the University of California License Agreement

**LICENSE AGREEMENT
THE REGENTS AS LICENSEE**

THIS AGREEMENT is dated _____, 2008 ("Effective Date"), by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a municipal corporation (referred to variously as "Agency" or "Licensor"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation on behalf of the Riverside campus ("Licensee").

RECITALS

WHEREAS, Licensee seeks to acquire the right to enter upon Licensor's property known as the Palm Springs Visitor Center parking lot located at 2901 N. Palm Canyon Drive (the "Premises"), as shown on the attached Exhibit "A", which is incorporated by reference, for the purpose specified in Paragraph 1 below.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

1. **USE AGREEMENT SUMMARY.** Certain fundamental Agreement provisions are presented in this Section and represent the agreement of the parties hereto, subject to further definition and elaboration in the respective referenced Sections and elsewhere in this Agreement. In the event of any conflict between any fundamental Agreement provision and the balance of this Agreement, the latter shall control. References to specific Sections are for convenience only and designate some of the Sections where references to the particular fundamental lease provisions may appear. Licensor hereby grants to Licensee, and to its agents and contractors, a non-exclusive License to enter upon and use the Premises and the right of ingress and egress to and from the Premises, subject to the terms and conditions herein, for the purpose of parking for Licensee's Palm Springs-to-UCR Vanpool Program. ("License").

1.1 **Facility.** The "Facility" shall refer to that certain real property located in the City of Palm Springs, County of Riverside, State of California, as depicted on the Plot Plan attached as Exhibit "A" hereof and identified as the Palm Springs Visitor Center parking lot located at 2901 N. Palm Canyon Drive (the "Premises"), Palm Springs, CA.

2. **Term.** This License shall commence upon the Effective Date and shall continue for a one-year period ("Term"). Upon the expiration of the initial Term, this License Agreement shall automatically renew for successive periods of one (1) year (each being a "Renewal Term") unless either party hereto provides written notice to the other of their intent to terminate this License at least sixty (60) days prior to the expiration of the then existing Term (or Renewal Term). Notwithstanding the forgoing, either party may terminate this License Agreement at any time by giving sixty (60) days' written notice to the other party.

3. **Consideration.** This License is granted in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

4. Conditions Applicable to License. This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way of record and to such other matters concerning use of the Premises as are within the actual knowledge of Licensee.

5. No Transfer or Assignment. This License is personal to Licensee. Any attempt to transfer or assign this License shall terminate it.

6. Permits. Licensee shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies.

7. No Interference. Licensee shall not unreasonably interfere with the normal operation and activities of Licensor, and Licensee shall use ordinary care in its activities on the Premises to minimize damage to the Premises and inconvenience to Licensor, its agents, employees and invitees.

8. Repair and Restoration. If Licensee, its agents or contractors cause any damage to the Premises, or to Licensor's roads, infrastructure or other property and improvements (collectively "Property") in connection with the exercise of this License, Licensee shall repair and restore the Premises and Property to their original condition prior to Licensee's use of this License. Licensee shall perform the repair and restoration required hereunder prior to the expiration of this License, or within ten (10) days of its earlier termination. In the event that repair and restoration is performed following the termination of this License, the Licensee's Indemnity and Insurance obligations in paragraphs 12 and 13 shall continue until repair and restoration is completed as provided herein.

9. Breach and Cure. In the event that Licensee breaches any of its obligations under this License, Licensor shall send Licensee a written notice specifying the nature of such breach. Licensee shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for Licensee's performance, then Licensee shall commence performance within such ten (10) day period and, thereafter, diligently proceed to completion. If Licensee fails to cure or to commence cure within such ten (10) day period, then Licensor shall have the right to terminate this License immediately by serving Licensee with written notice of termination. Licensor shall have all rights and remedies available under California law including, but not limited to, actions for damages and specific performance, for any breach of Licensee's obligations hereunder.

10. Alteration in Writing. This License supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this License. No alteration or variation of this License shall be valid unless made in writing and signed by Licensor and Licensee.

11. Notice. Any notice to any party provided for or pursuant to this Agreement shall be given by: personal delivery; certified or registered mail (return receipt requested and postage prepaid); nationally recognized overnight courier service such as Federal Express, UPS or United States Postal

Service (freight or postage prepaid); or transmission via facsimile, with confirmation copy of the notice sent by certified or registered mail (return receipt requested and postage prepaid), and transmission confirmation retained by the sender, and shall be delivered to the receiving party at the address stated below, or at such other address as such party may designate by written notice to the other party from time to time in accordance with the provisions of this Section. Any notice that is personally delivered shall be deemed delivered upon receipt. Any notice that is delivered by certified or registered mail shall be deemed delivered four (4) business days after the postmark. Any notice that is delivered by overnight delivery shall be deemed delivered upon receipt as confirmed by the overnight courier service. Any notice that is transmitted via facsimile prior to 4:00 pm PST shall be deemed delivered on that business day, and if transmitted after 4:00 pm PST or on a federal or state holiday or weekend shall be deemed delivered as of the next business day. Any notice required hereunder shall be in writing and shall be addressed as follows:

Licensors: Community Redevelopment Agency
City of Palm Springs
David H. Ready, Esq., Ph.D., Executive Director
3200 East Tahquitz Canyon Way
Palm Springs, CA 92264

With a copy to: Douglas C. Holland,
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626

Licensee: University of California, Riverside
Real Estate Services
900 University Avenue
326 Surge Building
Riverside, CA 92521
(951) 827-5263
(951) 827-3299 (Fax)

with a copy to: University of California, Riverside
Transportation and Parking Services
683 Linden Street
Riverside, CA 92521-0138
(951) 827-4395

11.1 **Time of Essence.** Time is expressly deemed to be of the essence of this Agreement and each and every provision hereof.

11.2 **Integration.** All Recital paragraphs and all Exhibits to this Agreement shall be and are hereby made a part of this Agreement. This Agreement (including all Recitals herein, Exhibits hereto, and documents incorporated herein by reference) contains the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous oral

or written agreements. Any oral representations or modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification in writing signed by each party.

11.3 **Amendment.** This Agreement may not be amended or modified in any manner without the express written agreement of both parties.

11.4 **Governing Law.** This Agreement, and the rights and obligations of the parties under this Agreement, shall be interpreted and enforced in accordance with the laws of the State of California.

11.5 **Further Assurances.** Each party agrees to timely execute and deliver such other documents and perform such other acts as may be necessary to effectuate the purposes of this Agreement.

11.6 **Waiver.** Any waiver of the breach of any covenant, condition or promise of this Agreement shall not be deemed a waiver of any succeeding breach of the same or of any other covenant, condition or promise of this Agreement. No waiver shall be deemed to have been given unless given in writing and in compliance with the "Notices" section set forth above.

11.7 **Headings.** The section headings herein are for convenience of reference only and shall in no way define, increase, limit or describe the scope or intent of any provision of this Agreement.

11.8 **Attorneys' Fees.** In the event of any litigation or any legal proceedings (including, without limitation, appeals, arbitrations or other alternative dispute mechanisms, and bankruptcy proceedings) between any of the parties arising out of or relating to this Agreement or the alleged breach thereof, or arising out of the relationship between the parties or the transactions(s) underlying this Agreement, or to interpret or enforce this Agreement, or should this Agreement be the basis for any defense in any action brought by any party to this Agreement, then the prevailing party shall be entitled to its reasonable costs and attorneys' fees.

11.9 **Assignment.** Licensor shall not have the right to assign all or any portion of its rights and obligations under this Agreement to any other person or entity without the prior written consent of the Agency, which may not be unreasonably withheld, except to an entity that is controlled by Licensor, as applicable, in which case the assignor shall be released from its obligations hereunder.

11.10 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, trustees, successors and permitted assigns of the parties.

11.11 **Severability.** In the event that any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

11.12 **No Partners.** Nothing contained in this Agreement shall be deemed to constitute the parties as partners or joint venturers.

11.13 **Representation of Parties by Independent Legal Counsel.** In the drafting of this Agreement, each party has been represented by its own counsel.

11.14 **Authorized Signatory.** Each person signing this Agreement on behalf of an entity warrants that he or she has the authority to sign on behalf of said entity and, if requested, shall deliver a resolution or other written authorization evidencing such authority and consent by the partnership, corporation or limited liability company to be bound by this Agreement.

11.15 **Counterparts/Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement will be considered executed and legally binding when the signature of a party is delivered by facsimile transmission. Such facsimile signature shall be treated in all respects as having the same effect as an original signature.

11.16 **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

12. **Signs.** Licensee shall not place or permit to be placed any sign that is not approved in advance in writing by the Licensor, or that is not in compliance with the sign ordinance of the City of Palm Springs, upon the exterior of the existing structure. Any sign not constructed in accordance therewith shall be immediately removed by Licensee and, if said sign is not removed by Licensee within ten (10) days of written notice from Licensor to Licensee, then Licensor may remove and destroy said sign without Licensee's approval and without any liability to Licensor.

13. INSURANCE AND INDEMNIFICATION

13.1 **Insurance Provided by Licensor.** Licensor shall maintain fire and extended coverage insurance throughout the term of this Lease in an amount equal to at least ninety percent (90%) of the replacement value of the building containing the Premises, together with such other insurance, coverages and endorsements as may be required by Licensor's lender, or as Licensor may determine in its sole discretion. Licensee hereby waives any right of recovery from Licensor, its officers and employees, and Licensor hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance. Licensee agrees to pay to Licensor its pro rata share of the cost of said insurance to be determined by the relationship that the gross floor area of the Premises bears to the total gross leasable floor area of the building or buildings for which such policy relates.

13.2 **Insurance Provided by Licensee.**

(a) Licensee to Provide Personal Property Insurance. Licensee, at its expense, shall maintain fire and extended coverage insurance written on a per occurrence basis on its trade fixtures, equipment, personal property and inventory within the Premises from loss or damage to the extent of their full replacement value.

(b) Licensee to Provide Liability Insurance. During the entire term of this Lease, the Licensee shall, at the Licensee's sole cost and expense, but for the mutual benefit of Licensor and Licensee, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises and on any sidewalks directly adjacent to the Premises written on a per occurrence basis in a combined single limit of ONE MILLION DOLLARS (\$1,000,000.00) for bodily injury, death, and property damage or provided, however, if Licensor so elects Licensor may provide such insurance and, in such event, Licensee agrees to pay its pro rata share of the cost of said insurance on the same basis as provided in Section 6.1 above.

(c) Licensee to Provide Workers' Compensation Insurance. Licensee shall, at the Licensee's sole cost and expense, maintain a policy of workers' compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Licensee and the Licensor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Licensee in the course of conducting Licensee's business in the Premises.

(d) General Provisions Applicable to Licensee's Insurance. All of the policies of insurance required to be procured by Licensee pursuant to this Section 13.2 shall be primary insurance and shall name the Licensor, its officers, employees and agents as additional insureds. The insurers shall waive all rights of subrogation and contribution they may have against the Licensor, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice by registered mail to the Licensor. Prior to the Commencement Date or such earlier date as Licensee takes possession of the Premises for any purpose; and at least thirty (30) days prior to the expiration of any insurance policy, Licensee shall provide Licensor with endorsements evidencing the above insurance coverages written by insurance companies acceptable to Licensor, licensed to do business in the state where the Premises are located and rated A:VII or better by Best's Insurance Guide. In the event the Risk Manager of Licensor ("Risk Manager") determines that (i) the Licensee's activities in the Premises creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Licensee agrees that the minimum limits of any insurance policy required to be obtained by Licensee may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Licensee shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of Licensor within ten (10) days of receipt of notice from the Risk Manager. Licensor and Licensee hereby waive any rights each may have against the other on account of any loss or damage occasioned by property damage to the Premises, its contents, or Licensee's trade fixtures, equipment, personal property or inventory arising from any risk generally covered by insurance against the perils of fire, extended coverage, vandalism, malicious mischief, theft, sprinkler damage or leakage, and earthquake. Each of the parties, on behalf of their respective insurance companies insuring such property of either Licensor or Licensee against such loss, waives any right of subrogation that it may have against

the other. The foregoing waivers of subrogation shall be operative only so long as lawful in California and provided further that no policy is invalidated thereby.

13.3 Indemnification of Licensor. Licensee, as a material part of the consideration to be rendered to Licensor under this Lease, hereby waives all claims against Licensor for damage to equipment or other personal property, trade fixtures, leasehold improvements, goods, wares, inventory and merchandise, in, upon or about the Premises and for injuries to persons in or about the Premises, from any cause arising at any time. Licensee agrees to indemnify the Licensor, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Licensee, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the Premises or the parking and common areas by Licensee or its employees and customers, or arising from the negligent acts or omissions of Licensee hereunder, or arising from Licensee's negligent performance of or failure to perform any term, provision, covenant or condition of this Lease, whether or not there is concurrent passive or active negligence on the part of the Licensor, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the Licensor, its officers, agents or employees, who are directly responsible to the Licensor, and in connection therewith:

(a) Licensee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Licensee will promptly pay any judgment rendered against the Licensor, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Licensee hereunder; and Licensee agrees to save and hold the Licensor, its officers, agents, and employees harmless therefrom.

(c) In the event the Licensor, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Licensee for such damages or other claims arising out of, or in connection with, the negligent performance of or failure to perform the work, operation or activities of Licensee hereunder, Licensee agrees to pay to the Licensor, its officers, agents or employees, any and all costs and expenses incurred by the Licensor, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys' fees.

(d) Licensor's Obligation. Licensor shall indemnify, defend, and hold harmless Licensee, its officers, agents and employees, from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this License including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of Licensor, its officers, agents, partners or employees.

EXECUTED as of the Effective Date.

IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

LICENSEE:

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By: _____
Gretchen S. Bolar
Its: Vice Chancellor of Academic Planning Budget

LICENSOR:

EXECUTED as of the Effective Date.

IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

LICENSEE:

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By: _____
Gretchen S. Bolar
Its: Vice Chancellor of Academic Planning Budget

LICENSOR:

ATTEST: Community Redevelopment Agency
Of the City of Palm Springs, a
California Charter City

By: _____
James Thompson
City Clerk

By: _____
Executive Director

APPROVED AS TO FORM:

DRAFTED AND REVIEWED

By: _____
Douglas C. Holland
City Attorney

By: _____
John S. Raymond, Director
Community and Economic Development

Exhibit "A"

Map of the Amended Lease Area

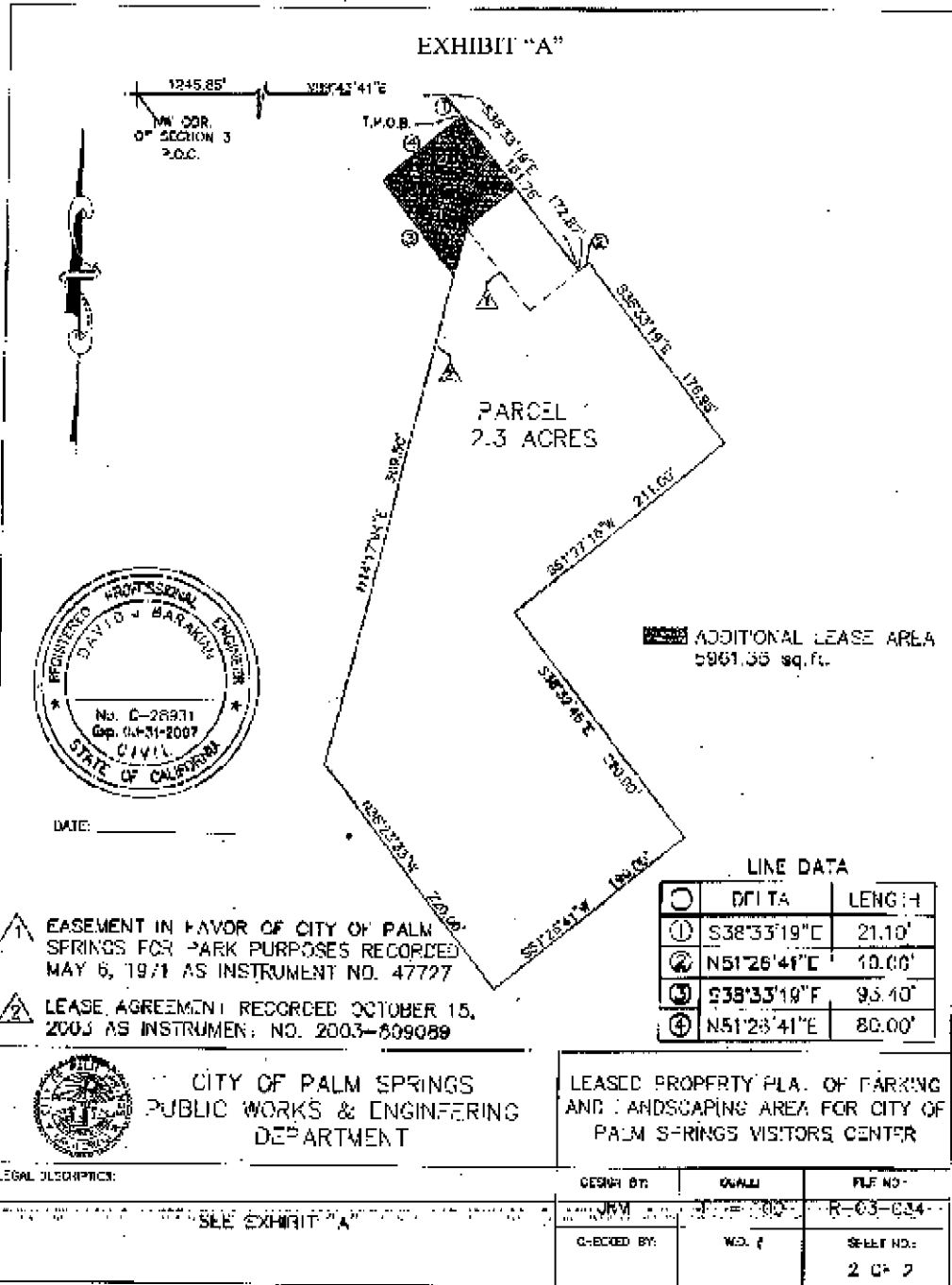


Exhibit "A-1"
Legal Description of Amended Lease Area

LEASED PROPERTY DESCRIPTION OF
PARKING AND LANDSCAPING AREA
FOR CITY OF PALM SPRINGS VISITORS
CENTER

LEGAL DESCRIPTION:

THAT PORTION OF PARCEL 1 OF PARCEL MAP 23130 RECORDED IN MAP BOOK 181, PAGES 50 THROUGH 53, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST; THENCE N89°43'41"E, ALONG THE NORTHERLY LINE OF SAID SECTION A DISTANCE OF 1245.85' FEET; THENCE S38°33'19"E A DISTANCE OF 21.11' FEET TO THE POINT OF BEGINNING:

THENCE S38°33'19"E, A DISTANCE OF 151.76' FEET;

THENCE N51°26'41"E, A DISTANCE OF 10.00' FEET;

THENCE S38°33'19"E, A DISTANCE OF 176.95' FEET;

THENCE S51°27'15"W, A DISTANCE OF 211.00' FEET;

THENCE S38°32'45"E, A DISTANCE OF 220.00' FEET;

THENCE S51°26'41"W, A DISTANCE OF 190.00' FEET;

THENCE N38°23'33"W, A DISTANCE OF 220.00' FEET;

THENCE N14°17'04"E, A DISTANCE OF 389.50' FEET;

THENCE N38°33'19"W, A DISTANCE OF 93.40' FEET;

THENCE N51°26'41"E, A DISTANCE OF 80' FEET TO THE TRUE POINT OF BEGINNING.